

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47296 of 2015**

Arising Out of PS. Case No.-262 Year-2014 Thana- AURANGABAD COMPLAINT CASE
District- Aurangabad

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Umeshwar Dubey S/o Late Sant Kishore Dubey resident of Kara Tola Dubey
Bigha , P.S. Obra, District - Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. Krishna Vijay Dubey S/o Late Santranjan Dubey
3. Surendra Singh S/o Indradeo Singh
4. Vinay Singh S/o Indradeo Singh
5. Indradeo Singh S/o Late Baldeo Singh
6. Abhay Singh S/o Digamber Singh All are resident of village - Kara
Tola,
Dubey Bigha, P.S. Obra, District - Aurangabad

... .. Opposite Party/s

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Acts/Sections/Rules:

- Sections 323, 379 and 504 of the Indian Penal Code

Cases referred:

- Phulena Prasad vs. The State of Bihar & Others reported in (2002) 4
PLJR 232
- Rajeshwar Yadav vs. The State of Bihar & Others reported in (2004) 2
PLJR 699

Petition - filed to quash the order by which the learned SDJM has taken
cognizance of the offences under Sections 323, 379 and 504 of the Indian
Penal Code.

Held - The Magistrate committed a serious error by ordering the investigation
to be made by a police officer against a police officer who was made accused
by the petitioner in his complaint and the same. (Para 7)

Order impugned is not sustainable in the eye of law and is set aside and the
Magistrate is directed to pass a fresh order under Chapter XV of CrPC
according to merit and in accordance with law without being prejudiced with
this order. (Para 7)

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Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mr. Rakesh Singh, Advocate
For the O.P. No.2 to 6 : None
For the State : Mr. Nityanand, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

12 10-01-2025 Heard Mr. Krishna Prasad Singh, learned senior
counsel appearing for the Petitioner and Mr. Nityanand, learned
APP for the State.

2. No one appears on behalf of O.P. No.2 to 6.

3. The instant criminal miscellaneous petition has
been filed under section 482 of the Code of Criminal Procedure
(in short ‘Cr.P.C.’) with a prayer to quash the order dated
09.04.2015 passed in Complaint Case No. 262 of 2014 by which
the learned S.D.J.M, Daudnagar, Aurangabad has taken



cognizance of the offences under Sections 323 and 504 of the Indian Penal Code (in short 'IPC') against the O.P. No. 2 to 6 and has also taken cognizance of the offence under Section 379 of IPC against the O.P. No.2 in addition to the above offences.

4. At the outset, it is submitted by Mr Krishna Prasad Singh, learned senior counsel appearing for the petitioner that though the LCR called for by this Court has not been received but however, the relevant ordersheets of the Complaint Case No. 262 of 2014 have been filed with this petition and the same are sufficient to decide this matter in view of the legal question raised by the petitioner.

5. While assailing the order impugned the learned senior counsel has mainly argued that the petitioner filed a complaint against nine persons including the then S.H.O of Obra P.S. and the then Circle Officer of Obra Circle and the learned Magistrate despite having proceeded under Section 200 of Cr.P.C. on the complaint of the petitioner by order dated 22.10.2014 directed the investigation to be made by a police officer to find out whether the alleged act of the accused Anil Kumar Choudhary, then Circle Officer and Praveen Kumar then S.H.O of Obra police station had been committed in private capacity or in the capacity of a public servant which was not a



legal order as it is the settled position of law that on a complaint the Magistrate can either enquire the case himself or direct the police to investigate the matter and anyone of the said two modes has to be chosen by him but he cannot take recourse of both the modes simultaneously. In support of this submission learned senior counsel has placed reliance upon the judgment of this Court passed in the case of **Phulena Prasad vs. The State of Bihar & Others** reported in (2002) 4 PLJR 232 and paragraph no. 6 and 7 of this judgment upon which reliance has been placed are being reproduced as under:-

“ 6. So it is clear that the learned Magistrate on receipt of complaint which was made over to him under section 192(1) Cr. P.C. chose the mode of enquiring the case himself but after recording the statement of complainant on S.A. and statements of four more witnesses he asked the police to submit a report regarding the alleged occurrence with a direction to search out the affected victim. It means that the learned S.D.J.M. took the recourse of both the modes prescribed under section 202 Cr. P.C. i.e., “either to enquire into the case himself or direct investigation.” In my opinion, the procedure followed by learned S.D.J.M. in taking the recourse of both the modes is not correct and permissible by section 202 Cr. P.C. which clearly lays down that the Magistrate will “either enquire the case himself or direct the investigation to be made by a police officer or by



such other person which he thinks fit and proper”. The use of word “Or” makes it clear that any one of the modes out of the two has to be chosen. I am unable to accept the submission made on behalf of opposite parties that the learned Magistrate thought it necessary to make search of the victim boy and, therefore, by directing the police to submit report he has not committed any error. Had the Magistrate taken help of police only in respect of search of the victim the matter would have been different but in this case the order (Annexure-A series of counter-affidavit) of the Magistrate by which he directed the police to report clearly shows that he ordered the police for submitting a report regarding the alleged occurrence with a direction to search out the victim. So it is clear that he did not simply asked the police to search out victim boy but he also asked the police to submit report regarding the alleged occurrence. The impugned order dated 7.4.99 passed by the learned S.D.J.M. dismissing the complaint under section 203 Cr. P.C. which has been affirmed by the learned 2nd Addl. Sessions Judge by his order dated 31.7.99 passed in Cr. Revision No. 106/99 shows that while dismissing the complaint of petitioner he took into consideration the report submitted by the police that the complainant had himself kept his son secretly and had filed a false case against opposite parties on account of land dispute. It is true that in the concluding line of the order the learned S.D.J.M. has mentioned that considering the facts



and circumstances of the case, the evidence adduced by complainant under section 202 Cr. P.C. and report submitted by police the complaint is dismissed but then after going through the entire order it appears that main consideration for dismissing the complaint was the report submitted by the police. It is not only that the Magistrate in dealing with the complaint adopted both alternatives provided by section 202 Cr. P.C. against the provision of the law, his order directing the police to investigate suffers from another error. In the complaint petition itself the petitioner has clearly stated that he had gone to police station to lodge the case but he was not heard because the police is in collusion with the accused persons. In such circumstance directing the police to investigate and submit a report was not proper.

7. In the present case I find that the procedure as laid down by section 202 Cr. P.C. has not been correctly followed and the order passed by the learned S.D.J.M., Gopalganj directing investigation by police after enquiring into the case himself is not in accordance with law. It is a fit case which requires the exercise of inherent power by this Court under section 482 Cr. P.C.”

It is further submitted by the learned senior counsel that when an allegation is made against a police officer by way of complaint then such complaint should be handled with the



greatest care and caution and it would be improper to call for a report from the accused police officer or his superior or giving an order to investigate by the police and in such type of matter enquiry should be conducted by the Magistrate himself. In support of this contention learned senior counsel has placed reliance upon the judgment of this Court passed in the case of **Rajeshwar Yadav vs. The State of Bihar & Others** reported in **(2004) 2 PLJR 699**.

6. Mr. Nityanand, learned APP for the State has opposed this petition and submits that the order impugned has been rightly passed though after starting the proceeding under Section 200 of Cr.P.C. the learned Magistrate directed the investigation to be made in respect of the allegation levelled against the then Circle Officer and then S.H.O. of Obra police station but while passing the order impugned, the learned Magistrate mainly placed reliance upon the complaint as well as statements of enquiry witnesses, so, there is no illegality in the order impugned and there is no merit in this petition.

7. Heard both the sides and perused the order impugned. This Court finds no substance in the first ground taken by the petitioner's counsel with regard to the investigation which was directed by the learned Magistrate vide order dated



22.10.2014 as the proviso of sub-Section (1) of Section 202 of Cr.P.C. clearly says that where the complaint has not been made by a court no direction for investigation shall be made unless the complainant and the witnesses, present if any, have been examined on oath under Section 200 of Cr.P.C. and in the present matter, it is an admitted position that the complaint was not filed by the court rather the same was filed by a private person and the learned Magistrate passed the order as to directing the investigation in respect of the accusation levelled against two accused after the examination of four enquiry witnesses who were present including the complainant, so, in view of the said position, the principle laid down by this Court in the judgment of **Phulena Prasad (supra)** does not help the petitioners as it is mandatory for the Magistrate to examine the complainant and his present witnesses where the complaint has not been made by a court before passing a direction under Section 202 of Cr.P.C. for investigation by a police officer or by any other person. But however, the learned Magistrate committed a serious error by ordering the investigation to be made by a police officer against a police officer who was made accused by the petitioner in his complaint and the same was in violation of the principle laid down by this Court in the case of



Rajeshwar Yadav (*supra*) and before passing the order impugned a letter was received by trial court from the office of Dy. S.P., Aurangabad, Daudnagar which might have affected the learned Magistrate while passing the impugned order and owing to this reason, the order impugned is not sustainable in the eye of law, so, it stands set aside and the learned Magistrate is directed to pass a fresh order under Chapter XV of Cr.P.C. according to merit and in accordance with law without being prejudiced with this order.

8. In the result, the instant criminal miscellaneous petition stands allowed.

(Shailendra Singh, J)

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