

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Revision No.788 of 2008**

Md. Muzaffar Alam S/o late Sri Safi Ahmad, R/o village- Injore Bara, P.S.- Panhara, District- East Champaran

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. Md. Farookh S/o Mainul Haque
3. Md. Firoj S/o Maimul Haque, Sl. Nos. 2 and 3 are R/o village- Injore Bara, P.S.- Panhara, District- East Champaran

.... .... Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Aditya Sharan, Advocate  
Mr. H. K. Sharan, Advocate  
Mr. P. K. Sharan, Advocate

For the O. P. Nos. 2 & 3 : Mr. S.M. Nematullah, Advocate  
Mr. Md. Ansur Rahman, Advocate

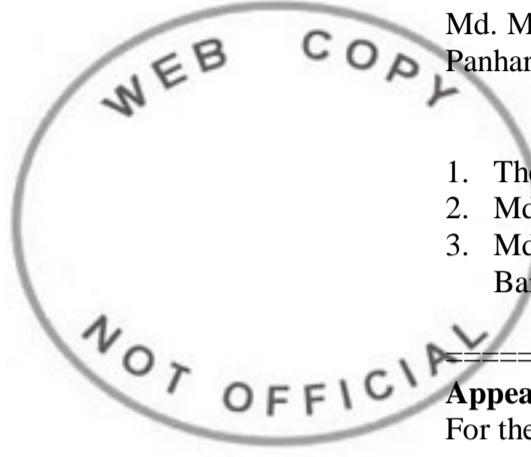
For the Respondent/s : Mr. Ram Chandra Singh, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD  
VERMA  
ORAL ORDER**

4 31-08-2012 Heard learned counsel for the petitioner, learned Additional Public Prosecutor appearing on behalf of the State and the learned counsel appearing on behalf of opposite party no. 2.

2. By filing the present revision application the petitioner has assailed the validity, correctness and propriety of the order dated 10.6.2008 passed in Enquiry No. 95 of 2008 arising out of Complaint Case No. 601 of 2007 by the learned Judicial Magistrate, 1<sup>st</sup> Class, Sikarahana, whereby in exercise of powers under section 203 Cr.P.C. he has dismissed the complaint petition filed on behalf of the petitioner.

3. It is admitted case of the parties that petitioner



lodged an F.I.R. for the offence under section 436 I.P.C. giving rise to Phenhara P.S. Case No. 18 of 2006 dated 27.3.2006 and in the aforesaid F.I.R. vide Annexure-1 opposite party nos. 2 and 3 are not named as accused. On close of investigation police submitted final form, but opposite party no. 2 and 3 were not chargesheeted, which was accepted by the learned Judicial Magistrate. A protest petition filed on behalf of the petitioner was treated as compliant petition, giving rise to Complaint Case no. 601 of 2007 in which opposite party nos. 2 and 3 were arrayed as accused. The statement of the petitioner (complainant) was taken on oath. During course of enquiry under section 202 Cr.P.C. the petitioner produced three witnesses. It is the case of the petitioner that all the three witnesses examined during the course of enquiry supported the prosecution case and named opposite party nos. 2 and 3 as the persons responsible for commission of crime.

4. Learned counsel for the petitioner submits that for the purpose of taking cognizance and for issuance of process against the accused persons in terms of section 204 Cr.P.C. or for the purpose of dismissal of complaint petition in exercise of powers under section 203 Cr.P.C. learned Judicial Magistrate was required to find out only a *prima facie* case and he could not have acted as a trial court. According to learned counsel, the learned

Judicial Magistrate has exceeded his jurisdiction and has illegally dismissed the complaint petition by looking into all other materials including the final form and possible defence of opposite party nos. 2 and 3. It is contended that in the given facts of the case, the matter requires reconsideration.

5. Learned counsel appearing on behalf of the opposite party nos. 2 and 3 has opposed the prayer made in this application and has supported the impugned order. According to the learned counsel the prosecution was started against the opposite party nos. 2 and 3 merely on suspicion, and even during the course of enquiry all the witnesses have not specifically named the opposite party nos. 2 and 3 as accused responsible for commission of crime in question. According to him the impugned order is fit to be affirmed by this Court.

6. It is well settled that once protest petition is treated as a complaint petition, the learned Judicial Magistrate is obliged to fully comply the procedure prescribed under Chapter-XV of Cr.P.C. He is required to take the statement of complainant on oath and he is further required to take statement of witnesses produced on behalf of the complainant for the purpose of holding enquiry under section 202 Cr.P.C. For the purpose of taking cognizance the learned Judicial Magistrate is required to look into

protest-cum-complaint petition, the statement of complainant on oath and the statement of witnesses examined during the course of enquiry and nothing beyond. If on the basis of the enquiry, the learned Judicial Magistrate does not find a *prima facie* case, then he is fully entitled to dismiss the complaint petition in exercise of powers under section 203 Cr.P.C. But at that stage, he is not entitled to hear the accused persons or consider the possible defence of the accused or look into any other materials, which may not be relevant or were not brought on record during the course of enquiry on behalf of the complainant under Chapter XV of the Cr.P.C.

7. After having heard the parties and on perusal of the materials on record, this Court finds that the learned Judicial Magistrate has exceeded his jurisdiction and has gone beyond the scope and scheme prescribed under Chapter XV of the Cr.P.C. He has considered the final form earlier submitted by the police. He has also taken note of possible defence of opposite party nos. 2 and 3 and, thereafter, he has dismissed the complaint petition filed on behalf of the petitioner. Admittedly, learned Judicial Magistrate has committed serious error in law by exceeding his jurisdiction.

8. For the reasons recorded above, the impugned order dated 10.6.2008 passed in Enquiry No. 95 of 2008 arising out of

Complaint Case No. 601 of 2007 by the learned Judicial Magistrate, 1<sup>st</sup> Class, Sikarahana in the district of East Champaran, is hereby set aside and the matter is remitted back to the learned Judicial Magistrate, 1<sup>st</sup> Class, Sikarahana for passing a fresh order in accordance with law.

9. It is expected that on receipt/production of a copy of this order the learned Judicial Magistrate, 1<sup>st</sup> Class, Sikarahana shall decide the matter afresh by passing a fresh order in accordance with law expeditiously.

10. It goes without saying that the learned Judicial Magistrate 1<sup>st</sup> Class, Sikarahana shall apply his independent judicial mind to the facts of the case, and shall pass his fresh order without being influenced by any observations made by this Court in the present order. Observations made in the present order are only for the purpose of disposal of the present case.

11. The application stands allowed with the observations and directions made above.

RPS/-

**(Birendra Prasad Verma, J)**