

(1987) 02 PAT CK 0011
In the Patna High Court

Jagdish Prasad Sharma and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 19-02-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 91

Citation : (1988) CriLJ 287

Hon'ble Judges : Ramnandan Prasad, J

Bench : Single Bench

Judgement

Ramnandan Prasad, J.—This application u/s 482 of Cri. P.C. (hereinafter referred to as "the Code") has been filed for quashing an order dt. 20-12-1983 and subsequent order dt. 3-1-1984 purporting to have been passed u/s 91 of the Code by the first class Judicial Magistrate, Araria.

2. The facts leading to the present application are that on 21-7-1983 one Nakul Kumar Jha, Sales Manager of Himalaya Medical Hall, Biratnagar, had paid Rs. 1,05000/- to petitioner 1 who happened to be the Cashier of that firm at Jogbani, for getting a draft prepared in favour of Bombay Medicinal Shop on a Bank at Jogbani. But, instead of getting the draft prepared, petitioner 1 became traceless with the money and as such Nakul Kumar Jha lodged a first information report with the Jogbani police on 25-7-1983 and the said police registered a case against him u/s 406 of the IPC. In course of investigation the petitioner and his brothers including petitioner 2 were arrested at their house in the State of Rajasthan. The police also seized two pass-books standing in the name of the petitioners with the State Bank of Bikaner and Jaipur. After this seizure the informant and his master, namely, Bhagwan Das Lohia, filed an application before the learned Judicial Magistrate at Araria for issuance of summons to the Manager of Khanda Falsa Branch of State Bank of Bikaner and Jaipur and also to the Manager of Nokha Branch of the said Bank to send to the court A/C payee draft of Rs. 7200/- and Rs. 90300/- respectively in the name of Bhagawan Das Lohia aforesaid-both payable at State Bank of India at Jogbani. At that time the two

petitioners had also sent an application to the court concerned for allowing the said prayer of Bhagawas Das Lohia and they also sent discharge certificates in the name of the Bank concerned. Eventually, on 20-12-1983 the learned Magistrate directed the said Banks to send the money in A/C payee drafts in the name of Bhagawan Das Lohia, as prayed for by him with a stipulation that the money shall not be released to Bhagwan Das Lohia till the disposal of the case. Before the said direction could be sent to the Banks concerned, the two petitioners filed a petition in court for recalling the order dt. 20-12-1983 as the two petitions and the discharge certificates alleged to have been sent by them from jail were not genuine documents, rather they were fraudulent documents brought into existence after taking their signatures thereon by deceitful means. The learned Magistrate, however, rejected this petition of the petitioners by order dt. 3-1-1984. The petitioners have now come to this Court against the aforesaid two orders.

3. The submission of the learned Counsel appearing for the petitioners is that the learned Magistrate had no jurisdiction to pass the impugned order dt. 20-12-1983 in the terms in which it has been passed and the said order was beyond the scope of Section 91 of the Code under which the learned Magistrate has purported to have passed the impugned order. It was strongly contended that the learned Magistrate could not pass such an order in exercise of his powers u/s 91 of the Code. For proper appreciation of this submission it would be necessary to refer to the operative part of this order which is as follows:

Therefore, the prayer of the petitioners is allowed and both the Managers of the respective Banks be summoned for sending the aforesaid amount to the court by a/c payee drafts in the name of Bhagwan Das Lohia payable at Jogbani Branch of State Bank of India. Further, it is directed that the aforesaid amount shall not be released by the State Bank of India Jogbani Branch till the disposal of the case.

4. It is evident that by this order the learned Magistrate directed the two Banks to send the said amounts through A/C payee Bank drafts in the name of Bhagawan Das Lohia which should be payable at the Jogbani Branch of State Bank of India. The question arises as to whether Section 91 of the Code authorises the Magistrate to pass such an order. This section is as follows:

91.(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

5. A bare perusal of this section would indicate that the power of the Court under this section is limited to the issuance of summons or written order requiring the person in whose possession or power the required document or thing is believed

to be, to attend and produce it at the time and place stated in the summons or order. Evidently this section does not authorise the court to direct any person to convert the cash into a Bank draft and that also in the name of a person different from that in whose name the accounts stand. The words used in the section are "document or thing" which are said to be in possession of the person who is being directed to produce the same. Apparently, this section does not authorise the Magistrate to direct that person to convert the "thing" in a form different from that in which it was in his possession, Evidently, Section 91 was intended to give an aid in the investigation and trial of the offence under consideration and not for facilitating the disposal of the property involved. What the learned Magistrate has done in the present case is different from merely requiring the Bank Managers to produce the accounts standing in the name of the petitioners, rather he has directed them to convert the amounts in deposit in those accounts into the A/C payee drafts, not in the names of the petitioners, but in the name of a different person who is said to be the proprietor of the firm of which the informant was the sales Manager. So, by this order, the learned Magistrate has not given direction for mere production of the thing or document, but has asked the Managers to produce the same in a different form altogether, which, I am afraid, he was not authorised to do in terms of Section 91 of the Code.

6. Thus, it is apparent that the learned Magistrate has exceeded his jurisdiction in passing the impugned order, as Section 91 did not authorise him to pass such an order. He could, if necessary, in the interest of trial, direct the Managers concerned to produce the document or thing which he considered necessary to be produced in court, but he could not direct them to change the form of the thing sought to be produced,

7. Mr. Rajgarhia, learned Counsel for Opposite party No. 2, namely, the complainant has however, contended that the impugned order was the only appropriate order in the circumstances of the case. His submission is that the impugned order dt. 20-12-1983 was passed only with the express agreement of the two petitioners. It was pointed out that both the petitioners had sent a petition from jail to the court in which they had stated that they had compromised the case with the complainant and as such the money should be paid to Bhagawan Das Lohia, who was the owner of the money in question. It was further stated that in fact they had also sent two discharge certificates in the name of the bankers to enable them to send the money in the name of Bhagwan Das Lohia payable at Jogbani. It was emphasised that the learned Magistrate had himself taken care to see that the money was not actually paid to Bhagwan Das Lohia till the disposal of the case by passing a specific order in this regard. On the other hand, it was contended on behalf of the petitioners that those petitions and discharge certificates were fraudulent papers and could not be acted upon. It was pointed out that the petitioners had themselves filed a petition before the learned Magistrate soon after the passing of the order on 20-12-83 stating therein that those papers were fraudulent documents. It is not necessary for this Court to enquire into the allegations made in this petition as it is apparent that

the powers of the court u/s 91 of the Code could not be enlarged even if the accused persons consented to such an order, because the powers of the Magistrates are limited by the provisions of the Cri. P.C. and they have no inherent power to pass any order which they deem just and proper in the circumstances of the case. The powers of the Magistrates are circumscribed by the Code and they must act within the four corners of the Code. They cannot go beyond the provisions of the Code even with the consent of the parties.

8. There is yet another aspect of the matter. If the draft, as ordered by the learned Magistrate, is received and eventually the Court feels that Bhagwan Das Lohia was not entitled to that money, the Court would have to encounter more difficulty in getting the draft changed and the situation would still get more complicated. Then, the person to whom the money is to be paid after the disposal of the case will also suffer loss in interest, if the money is received in the form of Bank draft as ordered by the learned Magistrate.

9. For the reasons stated above, the impugned order dt. 20-12-1983 could not be legally passed under the provision of Section 91 of the Code and the learned Magistrate has clearly exceeded his jurisdiction in passing such an order. This order as well as the order dt. 3-1-1984 have, therefore, to be quashed and the matter is remanded back to the learned Magistrate for passing an appropriate order, if he thinks necessary to pass an order u/s 91 of the Code. The application is, accordingly, allowed and the two impugned orders are quashed.