

(2012) 01 PAT CK 0055

In the Patna High Court

Case No : Criminal Miscellaneous No. 24488 of 2009

Ram Krishna Poddar

APPELLANT

Vs

The State of Bihar and Amar Nath Choubey

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : (2012) 01 PAT CK 0055

Final Decision : Allowed

Judgement

H.K. Srivastava, J.—This petition u/s 482 of the Cr.P.C. has been filed on behalf of the petitioner Ram Krishna Poddar who is an accused in Complaint Case No. 943 of 2007 for quashing the order dated 07.06.2008 passed by Judicial Magistrate, 1st Class, Katihar in Complaint Case No. 943 of 2007 by which and whereunder he having found prima facie case under Sections 195, 197, 469, 387, 120B of the Indian Penal Code ordered to issue summons against petitioner and four other accused persons for procuring their attendance to face trial in the above stated case.

2. The brief fact which lies to file this quashing petition is that Opposite Party No. 2, namely, Amar Nath Choubey filed complaint case bearing Complaint Case No. 943 of 2007 on 26.04.2007 in the court of Chief Judicial Magistrate, Katihar alleging therein that on 02.11.2005, petitioner along with other co-accused, with conspiracy to each other and by way of their rangdari fully aware that they are public servant with an intention to collect money from big farmers of their jurisdiction taking the advantage of a case registered as Korha P.S. Case No. 157 of 2005 u/s 392/342 of the Indian Penal Code, came at the house of Opposite Party No. 2 and demanded fifty thousand cash by way of their rangdari. The father of Opposite Party No. 2 refused to pay the above stated amount as there was no case pending against him or his family members but petitioner along with co-accused Raj Kishore Singh., the then Sub Inspector of Manihari Police Station and co-accused A.P.Jha, the then Inspector of Manihari Police Station with conspiracy to each other made a seizure list of diesel showing that the same was

theft article though the full brother of Opposite Party No. 2 had produced the receipts for the same and the same was recorded by the informant of Manihari P.S. Case No. 119 of 2005 in his seizure list and furthermore, on the same day accused no. 1 Raj Kishore Singh lodged the Manihari P.S. Case No. 120 of 2005 under Sections 25 (1-B) A/26 of the Arms Act against the Opposite Party No. 2 though nothing had been recovered either from possession of Opposite Party No. 2 or from his house on 02.11.2005. The aforesaid first information report of Manihari P.S. Case No. 120 of 2005 was put up before the Chief Judicial Magistrate, Katihar on 04.11.2005. The full brother of Opposite Party No. 2 as well as his father requested the petitioner and others not to register false case against Opposite Party No. 2 and petitioner as well as co-accused A.P. Jha took rupees forty thousand from the father of Opposite Party No. 2 giving assurance to him that no case would be instituted against the Opposite Party No. 2. The full brother of Opposite Party No. 2 sent several applications to Superintendent of Police, Deputy Superintendent of Police and Hon'ble the Chief Minister of Bihar but Opposite Party No. 6, namely, Manohar Pd. Singh, the then Superintendent of Police, Katihar without spot verification found the case true in his supervision note. It is further alleged that by the order of the Hon'ble the Chief Minister, one Deputy Superintendent of Police, namely, Sri Binay Kumar Choudhary supervised the case and found that Manihari P.S. Case No. 120 of 2005 was falsely registered against Opposite Party No. 2 and nothing had been recovered from possession of Opposite Party No. 2. It has further been alleged by the Opposite Party No. 2 that the police officials by misusing their office not only took rupees forty thousand but also lodged false cases against Opposite Party No. 2 as well as his full brother. The Opposite Party No. 2 sent an advocate notice for grant of sanction after release from judicial custody but no order was passed on his petition and, accordingly, he filed the above stated complaint case.

3. The learned Chief Judicial Magistrate, Katihar registered the aforesaid complaint case and kept the same in his own file and directed the Opposite Party No. 2 to remain present in the court for his statement on S.A. On 28.05.2007, learned Chief Judicial Magistrate, Katihar recorded the statement of Opposite Party No. 2 on S..A and fixed the case for enquiry. On 15.06.2007, a petition on behalf of the Opposite Party No. 2 was filed before the learned Chief Judicial Magistrate, Katihar praying therein to transfer the case to another court for enquiry as the court of learned Chief Judicial Magistrate was lying vacant but learned Chief Judicial Magistrate, I/C rejected the aforesaid petition and called for a report from Superintendent of Police, Katihar and also directed the Opposite Party No. 2 to file copy of petition of complaint but the aforesaid case was adjourned on several dates and lastly, on 14.12.2007, learned Chief Judicial Magistrate, Katihar made over the case to the court of Sri N. Prasad, Judicial Magistrate, 1st Class, Katihar for further proceeding u/s 202 of the Cr.P.C. and directed the Opposite Party No. 2 to produce his witnesses before the court of Sri N. Prasad, Judicial Magistrate, 1st Class, Katihar.

4. On receipt of above stated record, learned Judicial Magistrate recorded the

statements of witnesses of Opposite Party No. 2 and closed the enquiry evidence on 05.02.2008. He directed the Opposite Party No. 2 to file the acknowledgement receipt and the copy of petition sent to D.G.P. for sanction order. On 18.03.2008, in compliance of order dated 25.02.2008, some documents were filed on behalf of the Opposite Party No. 2 and the case was posted for hearing and lastly on 07.06.2008, learned Judicial Magistrate, 1st Class, Katihar passed the impugned order dated 07.06.2008 taking cognizance for the offences under Sections 195, 197, 469, 387, 120B of the Indian Penal Code against petitioner and four other co-accused persons whereas accused no. 6, namely, Manohar Pd. Singh, the then Superintendent of Police, Katihar was exonerated from the aforesaid case.

5. Being aggrieved by the aforesaid impugned order dated 07.06.2008, petitioner has preferred this petition u/s 482 of the Cr.P.C. praying therein to quash the impugned order dated 07.06.2008.

6. The Opposite Party No. 2 filed counter affidavit stating therein that after great persuasion, Manihari P.S. Case No. 120 of 2005 was supervised by another Deputy Superintendent of Police who found that no firearm had been recovered from the house of Opposite Party No. 2 and moreover, up-till-now four prosecution witnesses have already been examined in Manihari P.S. Case No. 120 of 2005.

7. This petition was admitted for hearing vide order dated 12.07.2011 and later on, both the parties were heard at length.

8. Learned Senior Counsel, Sri B.P. Pandey appearing for the petitioner, challenged the impugned order on several grounds. Firstly, he submitted that admittedly, after filing of the above stated complaint case, the learned Chief Judicial Magistrate, Katihar kept the aforesaid complaint case in his personal file and after recording the statement of Opposite Party No. 2 on S.A., he fixed the case for enquiry but in course of aforesaid enquiry, he transferred the above stated complaint case to the court of Judicial Magistrate and accordingly, he violated the mandatory provision of the law. He further submitted that once the learned Chief Judicial Magistrate, Katihar took the responsibility of conducting enquiry on his shoulder, he was not empowered to transfer the case to a Judicial Magistrate because when he decided to conduct enquiry himself, he ought to have conducted the enquiry himself. In support of his submission, he referred a decision reported in *Jitan Tewari vs. State of Bihar* and another, 1982 5 BLJ 658 in which it has been held by Division Bench of this Court that if a Magistrate, after examine the complainant on solemn affirmation, wants to remove his doubt as to whether there is sufficient ground for proceeding against the accused or not and decides to hold an enquiry, then such enquiry has got to be conducted by that Magistrate himself and not by any other Magistrate. Another decision cited on behalf of the petitioner is *Shankar Nath Pathan vs. Prabhu Singh* reported in 1991 (I) BLJ 225 in which it has been held by this Court that once the learned Chief Judicial Magistrate decided to hold himself an enquiry u/s 202 of the Cr.P.C. and in course of which he examined a witness himself, it was no longer open to

him to transfer the case to another Judicial Magistrate u/s 192 of the Cr.P.C. Learned Senior counsel appearing for petitioner also relied upon the decision of Priya Ranjan Pandey and others vs. State of Bihar and another reported in 1987 BLJ 874 in which it has been held by this Court that according to the scheme of Section 202 of the Cr.P.C., if a Magistrate does not feel persuaded to issue process against an accused on receipt of the complaint and on his examination on solemn affirmation wants to remove his doubt whether there was a sufficient ground for proceeding against the accused or not and if he decides to hold an enquiry into the matter and not to get it investigated, then that enquiry has got to be conducted by the said Magistrate himself and he cannot get it enquired into by any other Magistrate.

9. It is further contended by him that when the learned Magistrate had got no power to enquire into the allegations levelled against the petitioner and other accused, the entire subsequent proceedings of the aforesaid case becomes illegal.

10. Learned senior counsel appearing for petitioner next submitted that according to case of Opposite Party No. 2, the petitioner was posted as Deputy Superintendent of Police, Manihari and he had gone along with other police officials to the house of Opposite Party No. 2 to make investigation in connection with Korha P.S. Case No. 157 of 2005 and seized huge quantity of diesel and also recovered firearms from possession of Opposite Party No. 2 and, thereafter, Opposite Party No. 2 was arrested and, therefore, the petitioner was discharging his official duty at the relevant time. So, in view of Section 197 of the Cr.P.C., the learned Magistrate had got no jurisdiction to take cognizance of the aforesaid alleged offences without prior sanction of the government and mere filing of petition as well as postal receipts were not sufficient for the learned Judicial Magistrate to overlook the above stated mandatory provision of the law. He relied upon a decision reported in State of Bihar Vs. Kamla Prasad Singh and Others, in which it has been held by the Hon'ble Supreme Court that if the offence has been committed in course of discharge of official duty, no cognizance of the alleged offences could be taken without a proper sanction of the government.

11. Learned senior counsel appearing for the petitioner next submitted that no case under Sections 195, 197, 469, 387 and 120B of the Indian Penal Code is made out. Continuing his submission, he submitted that learned Judicial Magistrate had got no power to take cognizance u/s 195 of the Indian Penal Code because Section 195 (B) (i) of Criminal Procedure Code says that no court shall take cognizance of any offence punishable under any of the following sections of the Indian Penal Code, namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and Section 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of that court or by such officer of the court as that court may authorize in writing in this behalf, or of some other court to which that court is subordinate. Apart from this, he further submitted that Section 195 of the

Indian Penal Code is exclusively triable by the court of Sessions and proviso of sub clause 2 of Section 202 of Cr.P.C. says that if the offence complained of is triable exclusively by the court of Sessions, the Magistrate shall call upon the complainant to produce all his witnesses and examine them on oath but in the present case three witnesses have been cited in complaint case and only two witnesses were examined by the learned Judicial Magistrate and, accordingly, he violated the above stated mandatory provision of the law.

12. It is further submitted by him that it is an admitted case of Opposite Party No. 2 that one Korha P.S. Case No. 157 of 2005 u/s 392/342 of the Indian Penal Code had been registered and in connection with the investigation of the aforesaid case, police went at his house and seized diesel in huge quantity and also police recovered firearms and, thereafter, two cases i.e. Manihari P.S. Case No. 119 of 2005 as well as Manihari P.S. Case No. 120 of 2005 were registered and in the aforesaid cases petitioner only made supervision and gave his supervision note and, thereafter, the aforesaid supervision note was approved by accused no. 6, the then Superintendent of Police, Katihar but the learned court below in similar, enquiry took cognizance of the offences against the petitioner and other accused whereas accused no. 6, the then Superintendent of Police, Katihar was exonerated from the aforesaid proceeding and, therefore, the learned court below has adopted double standard in passing the impugned order. On the basis of above stated contentions, learned counsel prayed for quashing the impugned order as well as subsequent proceedings of Complaint Case No. 943 of 2007.

13. On the other hand, learned counsel Sri Rajesh Kumar Singh appearing for Opposite Party No. 2 supported the impugned order arguing that it is not a proper stage for this Court to interfere into the above stated Complaint Case No. 943 of 2007 because at the time of conducting enquiry u/s 202 of the Cr.P.C. as well as at the time of passing order u/s 204 of the Cr.P.C. the enquiry court has to see only as to whether any prima facie case is made out or not and it is not essential for the enquiry court to make a roving enquiry. It is further contended by him that the Hon'ble Supreme Court of this country has already given certain guidelines in State of Haryana and others Vs. Ch. Bhajan Lal and others, and highlighted the circumstances when the High Court can exercise its power vested u/s 482 of the Cr.P.C. It is further contended by him that the present case does not come under the purview of guidelines given in above stated case of Bhajan Lal and, as a matter of fact, the Apex Court of this country has held in several decisions that the power vested u/s 482 of the Cr.P.C. should be exercised in very rarest of rare cases. It is further contended by him that so far as non-production of sanction order at the time of taking cognizance is concerned, according to case of the Opposite Party No. 2, an application had already been sent to competent authority for giving sanction order to prosecute the petitioner but the competent authority did not give any reply to the petition of Opposite Party No. 2 and moreover, it is settled principle of law that sanction order can be produced in court at any stage of the case before pronouncement of the judgment. So even

if, there was no sanction order before the learned Judicial Magistrate at the time of passing impugned order, then also, on this ground only the impugned order cannot be set aside or quashed.

14. On the basis of aforesaid submissions, he prayed before this Court for dismissing the quashing petition.

15. Having heard the rival contentions of both the parties, I have gone through the record as well as decisions cited on behalf of the parties.

16. Certain facts are admitted in this case. It is an admitted position that Korha P.S. Case No. 157 of 2005 for the offences under Sections 392/342 of the Indian Penal Code was registered and the police officials of Manihari Police Station visited the house of Opposite Party No. 2 on 02.11.2005 in connection with the above stated Korha P.S. Case No. 157 of 2005 and diesel was seized from the house of Opposite Party No. 2 for which a seizure list was prepared and Manihari P.S. Case No. 119 of 2005 u/s 414 of the Indian Penal Code was lodged against Om Prakash Choubey, the brother of Opposite Party No. 2 and on the same day, Manihari P.S. Case No. 120 of 2005 for the offences under Sections 25(1-B) A/26 of the Arms Act was registered against Opposite Party No. 2 and it is stated in the aforesaid case that one country made pistol, one six rounder revolver and five live cartridges of rifle were recovered from conscious possession of Opposite Party No. 2. It would appear from the counter affidavit of Opposite Party No. 2 that the brother of Opposite Party No. 2 has already been acquitted in Manihari P.S. Case No. 119 of 2005 whereas trial of Manihari P.S. Case No. 120 of 2005 is still going on. It is also an admitted position that at the relevant time, petitioner was posted as Deputy Superintendent of Police, Manihari Sub division, District-Katihar and he had made supervision of both the above stated cases i.e. Manihari P.S. Case No. 119 of 2005 as well as Manihari P.S. Case No. 120 of 2005. It is further an admitted position that Opposite Party No. 2 filed the present Complaint Case No. 943 of 2007 in the court of Chief Judicial Magistrate, Katihar on 26.04.2007 and on the same day, learned Chief Judicial Magistrate, I/C passed an order for registration of the aforesaid case and kept the same in personal file of Chief Judicial Magistrate, Katihar and furthermore, he directed the complainant (Opposite Party No. 2) to remain present in the court on 04.05.2007 for recording his statement on solemn affirmation. The statement of the complainant on solemn affirmation was recorded on 28.05.2007 by the learned Chief Judicial Magistrate, I/C and on the same day, he directed the Opposite Party No. 2 to produce his witnesses in enquiry. Therefore, it is clear from the aforesaid facts that the learned Chief Judicial Magistrate, I/C after recording the statement of Opposite Party No. 2 on solemn affirmation entered into the enquiry.

17. Learned Senior counsel, Sri Pandey appearing for the petitioner has challenged the impugned order on the ground that when learned Chief Judicial Magistrate, I/C decided to hold an enquiry and kept the file with him, he had got no jurisdiction to make over the aforesaid case u/s 192 of the Cr.P.C. to another Magistrate for holding enquiry. As I have already stated that in support of the

aforesaid contention, learned Senior counsel Sri B.P. Pandey has referred several decisions.

18. In the present case, admittedly, the solemn affirmation of the complainant (Opposite Party No. 2) was recorded by the Chief Judicial Magistrate, I/C and postponed the issuance of process and kept the file in the file of Chief Judicial Magistrate for enquiry. It is an admitted position that on 15.06.2007, a petition was filed on behalf of the Opposite Party No. 2 praying therein for transfer of the aforesaid complaint case from the court of Chief Judicial Magistrate but the aforesaid petition was rejected by the Chief Judicial Magistrate, I/C and by the same order he called for a report from Superintendent of Police, Katihar and after that several adjournments were given and when regular Chief Judicial Magistrate joined, he also gave adjournments for conducting enquiry and on 30.11.2007, attendance of one enquiry witness was filed in the court of Chief Judicial Magistrate but since he was on current duty the statement of aforesaid enquiry witness could not be recorded and the case was again adjourned for enquiry and after that on 14.12.2007, the Chief Judicial Magistrate transferred the above stated complaint case to the court of Sri N. Prasad, Judicial Magistrate, 1st Class, Katihar for further proceeding u/s 202 of the Cr.P.C. The aforesaid facts clearly go to show that in course of enquiry the statement of not a single enquiry witness could be recorded either by the Chief Judicial Magistrate, I/C or by regular Chief Judicial Magistrate. So, even if, it assumed that learned Chief Judicial Magistrate, I/C had kept the aforesaid complaint case for enquiry, then also, it is apparent that no witness could be examined in course of enquiry. No doubt, it is well settled proposition of law that once a Magistrate enters into the enquiry, he has got no power to make over the case to another Magistrate u/s 192 of the Cr.P.C. but the aforesaid proposition of law has been framed on the premises that if the statement of witnesses in enquiry has been recorded by a Magistrate, the order on the basis of aforesaid enquiry should be passed by the same Magistrate. In the present case, the position is quite different because admittedly, the statement of not a single witness in course of enquiry has been recorded either by the Chief Judicial Magistrate, I/C or by regular Chief Judicial Magistrate rather the statements of enquiry witnesses have been recorded by the learned Judicial Magistrate to whom the enquiry was transferred by learned Chief Judicial Magistrate and the same Magistrate has passed the order for issuance of process and, therefore, I am of the opinion that the decisions cited on behalf of the petitioner are not applicable in the present case.

19. Learned Senior counsel, Sri B.P. Pandey has challenged the validity of impugned order on the ground that petitioner being police official cannot be prosecuted for the offence which is said to have been committed in discharge of his official duty without prior sanction of the competent authority in view of Section 197 of the Cr.P.C. In the present case, admittedly, at the relevant time petitioner was posted as Deputy Superintendent of Police and he supervised the case lodged against Opposite Party No. 2. Although, in complaint petition, it is stated by the Opposite Party No. 2 that on 02.11.2005, petitioner and co-

accused Raj Kishore Singh as well as A.P. Jha made a seizure list of diesel showing that the same is theft article but admittedly, the seizure list of the aforesaid case does not bear the signature of the Opposite Party No. 2. Furthermore, it is an admitted position that petitioner is neither informant of Manihari P.S. Case No. 119 of 2005 nor the informant of Manihari P.S. Case No. 120 of 2005. Therefore, it is obvious that the petitioner only prepared supervision note in respect of Manihari P.S. Case No. 120 of 2005 in which the Opposite Party No. 2 was made accused and supervision note of Manihari P.S. Case No. 119 of 2005 in which the brother of Opposite Party No. 2 was made accused. The aforesaid act of petitioner obviously comes under discharge of his official duty. It is an admitted case of the parties that at the time of passing impugned order, the sanction order was not before the learned Judicial Magistrate. In this context, I would like to refer Section 197 of the Cr.P.C. which runs as follows:-

when any person who is or was a judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no Court shall take

cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

20. From bare perusal of the aforesaid Section, it is clear that if a public servant is an accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the State Government, if he is an employee of the State Government. Furthermore, the aforesaid section protects those public servants who can only be removed by the State Government. It is well settled position of law that when it is apparent from the complaint petition itself, that the act complained of was done by a public officer in due discharge of his duty as a public servant, sanction is to be demanded at the time of taking cognizance. If there is any doubt or if any enquiry is necessary as to whether the act complained of had nexus with the performance of official duty, then the matter is to be left to be decided at a later stage of the case. Although, in the present case, it has been alleged in the complaint petition that petitioner and co-accused A.P. Jha took rupees forty thousand from the father of the complainant saying that no case would be instituted against the brother of Opposite Party No. 2 but admittedly, the father of the Opposite Party No. 2 has not been examined in the present case as enquiry witness and apart from this, Manihari P.S. Case No. 120 of 2005 is still pending before the trial court. It is stated in the complaint petition that brother of Opposite Party No. 2 had given a notice to Deputy General of Police, Bihar, Patna for grant of sanction order against the then Superintendent of Police, Katihar who was accused no. 6 of the aforesaid complaint petition but there is nothing in the entire complaint petition to show that any letter or notice was sent to State of Bihar for grant of sanction for prosecution of the petitioner.

Admittedly, learned Judicial Magistrate has not taken cognizance of the offence against the then Superintendent of Police, Katihar, the accused no. 6 of complaint petition but he has taken cognizance of the offence against the petitioner in absence of any sanction order. Apart from this, I would like to mention here that Manihari P.S. Case No. 120 of 2005 in which the Opposite Party No. 2 was sent into jail custody is still pending and the trial is going on before the learned trial court and, therefore, in view of the aforesaid facts and circumstances, I am of the opinion that in the present case, there was a necessity of taking sanction for prosecution before passing order of cognizance and in the present case, the impugned order of issuance of process is hit by Section 197 of the Cr.P.C.

21. Admittedly, the learned Judicial Magistrate has found prima facie case under Sections 195, 197, 469, 387 and 120B of the Indian Penal Code and the submission on behalf of the petitioner is that no case under Sections 195, 197, 469, 387 and 120B of the Indian Penal Code is made out and apart from this, it has also been submitted on behalf of the petitioner that cognizance u/s 195 of the Indian Penal Code is hit by Section 195 of the Cr.P.C. because cognizance cannot be taken for the aforesaid offence except on the complaint in writing of the court and furthermore, since the offence u/s 195 of the Indian Penal Code is exclusively triable by the court of Sessions, the court is duty bound to examine all the witnesses of the complaint petition.

22. In Shivjee Singh vs. Nagendra Tiwary & others reported in 2010 (3) (S.C.) PLJR 133, it has been held by the Apex Court of this country that examination of all the witnesses cited in complaint or whose names are disclosed by the complainant in response to directions of the Magistrate is not a condition precedent for taking cognizance and issuance of process against persons named as accused in complaint petition and furthermore, the consequences of non-examination of other cited witnesses is to be considered at the time of trial. Therefore, it has already been settled by the Apex Court of this country that proviso of Section 202(2) of the Cr.P.C. is not mandatory rather it is directory in nature. Therefore, even if, all the cited witnesses of the complaint petition have not been examined by the complainant (Opposite Party No. 2) in course of enquiry, then also, the aforesaid fact will not vitiate the impugned order.

23. Here I would like to refer Section 195 of the Indian Penal Code which runs as follows:- "Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [by the law for the time being in force in [India]] is not capital, but punishable with [imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished".

24. The aforesaid Section makes the offence punishable u/s 195 of the Indian Penal Code if any person gives false evidence or fabricates false evidence. Therefore, the aforesaid section makes the offence punishable either on account of fabrication of false evidence or giving of false evidence in a judicial proceeding.

25. Section 195 (B) (1) says that no court shall take cognizance of the offence punishable u/s 195 of the Indian Penal Code except on the complaint in writing of that court or by such officer of the court as that court may authorize in writing in this behalf or of some other court to which that court is subordinate. Therefore, it is clear that if any false evidence is given before the court in a judicial proceeding, the court can not take cognizance of the offence u/s 195 of the Cr.P.C., unless the above stated court files written complaint and in absence of any written complaint, the concerned court has got no power to take cognizance for the offence u/s 195 of the Indian Penal Code. In my view, if a false document is fabricated outside the court, then necessity of filing written complaint by a court is not required because fabrication of a false evidence and production of false evidence before the court are two different things and in case of fabrication of false evidence, the filing of written complaint by a court is not necessary and the aggrieved party can file complaint, if any false evidence is fabricated outside the court and the concerned court can take cognizance of the offence u/s 195 of the Indian Penal Code even on the basis of complaint petition filed by a private person or aggrieved person.

26. Now, it has to be seen as to whether Section 195 of the Indian Penal Code in the present case is made out or not. According to complaint case, Manihari P.S. Case No. 120 of 2005 was lodged against Opposite Party No. 2 showing the recovery of firearms from his possession and the trial of Opposite Party No. 2 is still pending before the competent court and, therefore, up-till-now, it has not been established that in Manihari P.S. Case No. 120 of 2005 forged seizure list had been prepared and before final verdict in Manihari P.S. Case No. 120 of 2005, it cannot be said that Opposite Party No. 2 was framed in a false case by preparing forged documents and showing false recovery from his possession and, therefore, one of the important ingredients of Section 195 of the Indian Penal Code is presently lacking in the case in hand and, in my view, the learned enquiry Magistrate has committed an error in taking cognizance and issuing process for the offence u/s 195 of the Indian Penal Code against the petitioner.

27. The learned enquiry Magistrate has found prima facie case for the offence u/s 197 of the Indian Penal Code which runs as follows:- Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

28. From bare perusal of the aforesaid section, it is clear that to constitute an offence u/s 197 of the Indian Penal Code, two ingredients are essential. Firstly, issuing or signing of a certificate by accused and such certificate must have been issued or signed knowing or believing that it is false in any material point. Admittedly, in the present case no certificate has been issued or signed by the petitioner and he has only supervised Manihari P.S. Case No. 120 of 2005 and, therefore, in my view, Section 197 of the Indian Penal Code is also not made out

in the present case. So far as Section 469 of the Indian Penal Code is concerned, Section 469 of the Indian Penal Code says that "Whoever commits forgery, [intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine". The word "forgery" has been defined in Section 463 of the Indian Penal Code which says that "[Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery". One of the important ingredients of Section 463 of the Indian Penal Code is preparation of false document or part of the aforesaid document. As I have already stated that up-till-now it has not been decided as to whether the seizure list and supervision note etc. prepared in connection with Manihari P.S. Case No. 120 of 2005 were false and, therefore, it cannot be said that the documents prepared in connection with Manihari P.S. Case No. 120 of 2005 were false documents. No doubt, the genuineness of any document can be decided in course of trial but admittedly, the aforesaid documents are before the court in connection with trial of Manihari P.S. Case No. 120 of 2005 and up-till-now the final verdict of the court has not come and therefore, in my view, the offence u/s 469 of the Indian Penal Code is also not made out against the petitioner, at least, at this stage and the learned enquiry Magistrate committed an error ignoring the aforesaid fact while passing the impugned order.

29. Similar position in respect of Section 387 of the Indian Penal Code because up-till-now it has not been established that the petitioner and other co-accused instituted a false case against the Opposite Party No. 2 and moreover, if the proceeding of the present case is permitted to be continued, there is every possibility of contradictory verdicts of the courts because admittedly, trial of Manihari P.S. Case No. 120 of 2005 is still pending and the Opposite Party No. 2 has challenged his prosecution of Manihari P.S. Case No. 120 of 2005 in the present case on the ground that his prosecution in the aforesaid Manihari P.S. Case No. 120 of 2005 is based on forged and fabricated documents. Therefore, in my view, the continuance of the proceeding of the present case should not be permitted.

30. On the basis of aforesaid discussions, I am of the opinion that the impugned order dated 07.06.2008 passed in Complaint Case No. 943 of 2007 is liable to be quashed and accordingly, this quashing petition is allowed and the impugned order dated 07.06.2008 passed in Complaint Case No. 943 of 2007 is, hereby, quashed in respect of petitioner only.

31. In the aforesaid manner, this quashing petition stands disposed of.