

**(1997) 05 PAT CK 0053**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 1974 of 1992

Gaya Kahar

APPELLANT

Vs

The State of Bihar and Abhiram  
Sharma

RESPONDENT

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**Date of Decision:** May 13, 1997

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 155, 155(2), 190, 190(1), 190(2)
- Penal Code, 1860 (IPC) - Section 427

**Citation:** (1997) 2 PLJR 367

**Hon'ble Judges:** D.S. Dhaliwal, J

**Bench:** Single Bench

**Advocate:** R.P. Sharma and Ram Vijay Kumar, for the Appellant; Ajay Kumar Mathur and Ashwini Kumar Sinha, for Opposite Party No. 2, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

D.S. Dhaliwal, J.

Under challenge in this petition u/s 482 of the Code of Criminal Procedure is the order dated 13.2.1992 passed by the Chief Judicial Magistrate, Patna in Dhanarua Police Station N.F.I.R. No. 1/92, whereby he took cognizance for the offence under Section. 427 of the Indian Penal Code against the Petitioner as also the entire criminal prosecution of the Petitioner resting thereon.

2. It appears that Abhiram Sharma, Opposite party No. 2 gave written report to the police alleging therein that on 29.1.1992 at about 4.30 A.M. while he was proceeding towards Pabheri More he saw the Petitioner along with Ors. uprooting his Masoor crop. The Informant asked the accused not to uproot his crop, whereupon they all threatened to kill him. On the basis of aforesaid report Sanha entry No. 625 dated 29.1.1992 was made in the Police Station. It further appears that Sub-Inspector Jai Narain visited the place of occurrence and suo motu sent report (Annexure-2) to the

Court of Chief Judicial Magistrate and treating the same to be a complaint petition, the Chief Judicial Magistrate took cognizance for offence u/s 427 I.P.C. against the Petitioner.

3. I have heard the learned Counsel for the parties and have perused the records with their assistance.

4. The order taking cognizance cannot be sustained as it is not covered under any of the clauses of Section 190 of the Code of Criminal Procedure (hereinafter referred to as "the Code") relating to the taking of cognizance of the offence by Magistrates. Admittedly the written report filed before the Police by Opposite party No. 2 related to the commission of a non-cognizable offence u/s 427 I.P.C. by the accused. Section 155 of the Code lays down that whenever an information with regard to the commission of a non-cognizable offence within the local limits of the Police Station is received by an Officer Incharge of that Police Station, he shall enter or cause the substance of that report to be entered in a book kept in the Police Station, in the form as prescribed by the State Government and thereafter refer the Informant to the Magistrate.-Sub-section (2) of Section 155 of the Code further bars the Police Officer to investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

5. What has happened in the present case is that Opposite party No. 2 gave written report indicating commission of a non-cognizable offence which was entered in the register maintained in the Police Station as Sanha Entry No. 625 dated 29.1.1992. u/s 155 of the Code the Officer Incharge of the Police Station after recording the entry should have referred the Informant to the Magistrate but instead thereof he himself proceeded to the place of occurrence and held enquiries. Such an action is barred by Subsection (2) of Section 155 of the Code. After completing enquiry the Officer Incharge suo motu sent a report (Annexure- 2) to the Chief Judicial Magistrate for an offence u/s 427 I.P.C. against the Petitioner and Ors.. Opposite party No. 2 never filed a regular criminal complaint in the Court of Chief Judicial Magistrate.

6. Faced with this situation, the learned Counsel appearing for Opposite party No. 2 submitted that the written report sent by the Officer Incharge of the Police Station to the Chief Judicial Magistrate can be taken as complaint and in fact treating the same to be complaint the Chief Judicial Magistrate has taken cognizance of the offence under Sub-clause (a) of Section 190(1) of the Code.

7. After considering the contention, I do not find any merit in the same. The definition of complaint appearing in Sub-section (d) of Section 2 of the Code reads as follows:

Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has-committed an offence, but does not include a police report.

A bare perusal of the aforesaid, definition goes to show that it does not include a police report. Thus there was no proper criminal complaint before the Chief Judicial Magistrate on the basis of which he could have taken, cognizance leading to the prosecution of the Petitioner. The order taking cognizance and the prosecution of the Petitioner, therefore, cannot be sustained.

8. In the result, the petition is allowed. The impugned order taking cognizance as well as the entire criminal prosecution of the Petitioner resting thereon is hereby quashed.