

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12943 of 2013

Arising Out of PS.Case No. -68 Year- 2011 Thana -DUMRIAGHAT District- -

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1. Bullet Pandey @ Amrendra Pandey @ Amrendra Kumar, S/o Harishankar Pandey, Resident Of Village- Hussaini Di, P.S.- Dumrighat, District- East Champaran.
 2. Bhuneshwar Nath Pandey @ Bhuneshwar Pandey, S/o Mahendra Pandey, Resident Of Village- Hussaini Di, P.S.- Dumrighat, District- East Champaran.
 3. Jaleshwar Nath Pandey, S/o Mahendra Pandey, Resident Of Village- Hussaini Di, P.S.- Dumrighat, District- East Champaran.
 4. Prabhu Nath Pandey, S/o Gagan Pandey, Resident Of Village- Hussaini Di, P.S.- Dumrighat, District- East Champaran,
 5. Ganesh Pandey, S/o Sheoji Pandey, Resident Of Village- Hussaini Di, P.S.- Dumrighat, District- East Champaran.
 6. Pramod Kumar Verma @ Pramod Prasad Shrivastava, S/o Lalan Prasad, Resident Of Village- Hussaini Di, P.S.- Dumrighat, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Nageshwar Ram, S/o Late Sudhish Ram, Resident Of Village- Mangalpur, P.S.- Dumariaghat, District- East Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Md. Fahimuddin (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

6 23-07-2015 Heard learned Senior Counsel Mr. Rajendra Narayan
for the petitioners and learned A.P.P. for the State of Bihar.

2. This criminal miscellaneous application has been
filed by the petitioners for quashing the order dated 30.01.2012
passed by the learned Judicial Magistrate, 1st Class, East
Champaran, Motihari in G.R. No.2811 of 2011/T.R. No.1270 of

2012 arising out of Dumaria Ghat P.S. Case No.68 of 2011 whereby the court below has taken cognizance under Sections 147, 148, 149, 341, 323, 324, 307, 379, 447, 504, 506 I.P.C. and 27 of the Arms Act as well as 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The learned Senior Counsel for the petitioners submitted that the police after investigation filed final form and recommended for proceeding against the informant under Section 182/211 I.P.C. Thereafter the informant filed a protest petition. Without recording any evidence and treating the protest petition as a complaint case, the magistrate has taken cognizance in the case in the aforesaid sections. No doubt in the order the magistrate has stated that case-diary was perused but the paragraph number has not been mentioned in the impugned order, therefore, the impugned order is liable to be quashed. The learned Senior Counsel relied upon the decision of the Supreme Court in the case of **Minu Kumari & Another Vs. State of Bihar & Others (2006) 4 SCC 359** and submitted that the order taking cognizance is liable to be quashed because the magistrate neither took cognizance on the basis of the material available on the case-diary nor took cognizance on the basis of any witnesses examined under section 202 Cr.P.C. treating the protest petition as complaint.

4. The learned A.P.P. objected the prayer and submitted that the court below has taken cognizance on the basis of materials available on the case-diary.

5. Perused the impugned order.

6. From perusal of the impugned order, it appears that the court was conscious of the fact that the police has already submitted final form along with case-diary. Prior to acceptance of the final form the protest petition was filed by the informant. From perusal of the order, it is also clear that the court below has perused the case-diary and also F.I.R. and not that only on the basis of protest petition the cognizance has been taken. So far submission of the learned Senior Counsel for the petitioners that the paragraph number in the case-diary is not mentioned is concerned, it may be stated that it is not necessary at all to mention the paragraph number in the order taking cognizance. At the time of hearing of this application the photocopy of the case-diary was produced before this Court wherein the statement of the informant was recorded under Section 161 Cr.P.C. which clearly shows that he has supported the allegation made in the F.I.R. Therefore, now only because in the cognizance order the court below has mentioned that he also perused the protest petition, it cannot be said that the order taking cognizance is bad or that the

cognizance has been taken only on the basis of the protest petition.

7. So far the decision relied upon by the learned Senior Counsel for the petitioners is concerned, in the case of **Minu Kumari** (supra) itself the Hon'ble Supreme Court has held that the magistrate has the jurisdiction to differ with the final form submitted by the police and can take cognizance on the basis of material available on case-diary.

8. The Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. K.M. Sharan, (2008) 4 SCC 471** has held that at the stage under Section 482 Cr.P.C. the High Court is not called upon to embark upon an inquiry whether the allegations in the F.I.R. and in the charge sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. As stated above under Section 161 Cr.P.C. the informant has fully supported his case. Now, therefore, on the basis of the fact or the ground raised by the learned Senior Counsel that the impugned order is not in a particular form or that in the impugned order the magistrate has not mentioned the paragraph number in the case-diary, the order taking cognizance cannot be quashed.

9. It is not the case of the petitioners that the allegation made in the F.I.R. even if taken to be true then also it does not

constitute any cognizable offence. Therefore, on the basis of irregular order or that it is not in particular form, the order taking cognizance cannot be quashed.

10. I, therefore, find that this criminal miscellaneous application is devoid of merit and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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