

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19040 of 2015

Arising Out of PS.Case No. -192 Year- 2012 Thana -SHIKARGANJ District-
EASTCHAMPARAN(MOTIHARI)

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1. Jaimangal Thakur @ Shivaji son of Late Kuldip Thakur, resident of Village-
Champur, P.S. Patahi, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Kumar Singh, Adv.

For the Opposite Party/s : Ms Indu Kumari Shrivastav, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-05-2015

The instant application under section 482 of the Code of Criminal Procedure (in short 'the Code') has been filed for quashing the order dated 05.02.2015 passed by the learned 12th Additional Sessions Judge, Motihari in Sessions Trial No. 630 of 2014 arising out of Sikarganj (Chiraiya) P.S.Case No. 192 of 2012, whereby the application of the petitioner filed under section 228(1)(a) of the Code has been dismissed.

2. A short question of law has been raised by the learned counsel for the petitioner. He has submitted that apart from section 121-A of the Indian Penal Code, all other offences for which the petitioner has been charged are triable by the court of Magistrate. Section 121-A of the Indian Penal Code is punishable under Chapter



VI of the Indian Penal Code and in view of the provisions prescribed under section 196(1)(a) of the Code, in absence of previous sanction of the Central Government or of the State Government, the court is prohibited from taking cognizance of the offence. He has submitted that the police have submitted charge sheet in the case without obtaining sanction of the Central Government or of the State Government. The learned Magistrate has erroneously taken cognizance of the offence punishable under section 121-A of the Indian Penal Code and committed the case to the court of Sessions. At the stage of framing of charge, when an application under section 228(1)(a) of the Code was filed before the learned Sessions Judge, he also failed to take notice of the said fact and dismissed the application filed on behalf of the petitioner.

3. Learned counsel for the State has contested the matter. She has submitted that the legal issue being raised before this Court was not argued before the court below and the petitioner has taken this point for the first time in the present application. However, she concedes that in absence of sanction of the competent authority an accused cannot be prosecuted for the offence punishable under section 121-A of the Indian Penal Code.

4. Regard being had to the facts and circumstances of the case, I set aside the impugned order dated 05.02.2015 passed by the

learned 12th Additional Sessions Judge, Motihari in Sessions Trial No. 630 of 2014 arising out of Sikarganj (Chiraiya) P.S.Case No. 192 of 2012 and remand the matter back to the court below to consider the arguments advanced on behalf of the petitioner, and after going through the records, pass a fresh order in accordance with law.

5. The application is allowed to the extent indicated hereinabove.

(Ashwani Kumar Singh, J)

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