

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7706 of 2010

Arising Out of PS.Case No. 112 Year- 2009 Thana -null District- PATNA

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Om Prakash son of late Kashi Prasad, resident of Mohalla Dariyapur Chaitola,
Police Station Kadamkuan, District Patna

.... Petitioner/s

Versus

State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar, Advocate

For the Opposite Party/s : Mr. Shailendra Kr. Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 29-09-2015

The Petitioner seeks quashing of the order of cognizance

dated 21.7.2009 passed by the Additional Chief Judicial Magistrate,

Patna in Kadamkuan P.S. case No.112 of 2009.

The background facts are that a First Information Report was instituted with regard to an incident of dacoity, which had taken place in the heart of the town. Later on some miscreants were arrested. One of them was Diljeet Kumar, nephew of the present Petitioner. He was arrested from the house of the Petitioner at 4.30 A.M. His confessional statement was recorded wherein he stated that he had hidden Rs.50,000/- in the house of his uncle i.e. the present Petitioner whereas the rest of the miscreants had taken their share and left. On the same day at 6.30 A.M. the house of the Petitioner was raided and from the pocket of the Petitioner Rs.50,000/- was recovered.

It has been submitted on behalf of the Petitioner that even conceding that the recovery was from the trouser of the Petitioner but evidently he is not the person, who had committed the

dacoity nor had attempted to conceal the same. It was his nephew, who was responsible for hiding the money without the knowledge of the Petitioner.

The Counsel for the State had submitted that on going through the case diary apart from recovery of Rs.50,000/- on the basis of confessional statement there was no further material as against the Petitioner. However, the confessional statement of Diljeet Kumar was not sent along with the case diary. At this, the Court had directed production of the confessional statement which has been produced by the Counsel for the Petitioner. Let it be kept on the record.

On going through the confessional statement, the recovery of the money from the pocket of the Petitioner after two hours is well explained by the co-accused, and hence in the interest of justice I would quash the order of cognizance so far as the Petitioner is concerned.

Hence, the application is allowed and the order of cognizance dated 21.7.2009 passed by the Additional Chief Judicial Magistrate, Patna in Kadamkuan P.S. case No.112 of 2009 is hereby set aside so far as the Petitioner is concerned.

The Trial Court is directed to expedite the trial with regard to the rest of the accused persons.

Narendra/-

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(Anjana Prakash, J)