

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16221 of 2013

Arising Out of PS.Case No. -633 Year- 2009 Thana -SAHARSA District- SAHARSA

1. Ramsagar Paswan, S/o Late Dhuthar Paswan, Resident of Village-
Barsam Khopaiti, Police Station- Saur Bazar, District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. J.N.Thakur (App)

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 30-07-2015 Heard learned counsel Mr. Satish Kumar Singh for the
petitioner and learned A.P.P. Mr. J.N. Thakur for the State.

2. This criminal miscellaneous application has been
filed by the petitioner for quashing the order dated 13.09.2012
passed by learned Chief Judicial Magistrate, Saharsa in Saharsa
P.S. Case No.633 of 2009 whereby the court below has taken
cognizance under Sections 467, 468, 471, 420, 406 and 409 I.P.C.

3. It appears that the F.I.R. was lodged by the Circle
Officer on the direction of the District Magistrate to the effect that
the petitioner in spite of repeated transfer order did not join the
assigned transferred post as a result of which heavy revenue loss is
caused to the State. On 21.11.2009 some government papers were
seized from the tenanted premises of the petitioner and the

informant suspected that the other documents of the government might have been kept by the petitioner elsewhere.

4. The learned counsel for the petitioner submitted that during the transfer orders the petitioner's wife was seriously ill and, therefore, the petitioner did not join his transferred post. The wife of the petitioner represented to the concerned Minister for staying the transfer order and the Minister had requested the District Magistrate to consider and stay the transfer order and thereafter the Commissioner had sought an explanation from the District Magistrate as to how the petitioner was transferred. According to the learned counsel because of this, the District Magistrate in retaliation got this F.I.R. lodged. The learned counsel further submitted that in the departmental proceeding initiated against the petitioner he has already been exonerated and that even if the allegation in the F.I.R. is taken to be true in its entirety then also no case is made out and, therefore, the cognizance order was liable to be quashed.

5. On the other hand, the learned A.P.P. objected the prayer and submitted that the court below by the impugned order has found sufficient material to proceed against the petitioner and in fact for his inaction heavy loss has been caused to the State Government.

6. Perused the order passed by the court below and the F.I.R.

7. As stated above from perusal of the F.I.R. lodged by the Circle Officer, it appears that the allegation is only based on suspicion. There is no material indicating the guilt of the accused. The Hon'ble Supreme Court in the case of Harishchandra Prasad Mani Vs. State of Jharkhand, (2007) 15 Supreme Court Cases 494 has held that **it is well settled law by a series of decisions of the Supreme Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the accused. It is true that at the stage of taking cognizance adequacy of evidence will not be seen by the Court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people.** In the present case as stated above except the skilled drafting of the F.I.R. and the allegation that the petitioner did not obey the transfer order, there is no material implicating the petitioner to any offence.

8. The learned court below has only mechanically passed the order stating that on the basis of evidences available on it a prima-facie case is made out.

9. In view of the above facts and circumstances of the case and the facts that the F.I.R. has been lodged only on the suspicion and that the petitioner has already been exonerated in the departmental proceeding, this criminal miscellaneous application is allowed and the impugned order is quashed.

(Mungeshwar Sahoo, J)

Harish/-

U		T	
---	--	---	--