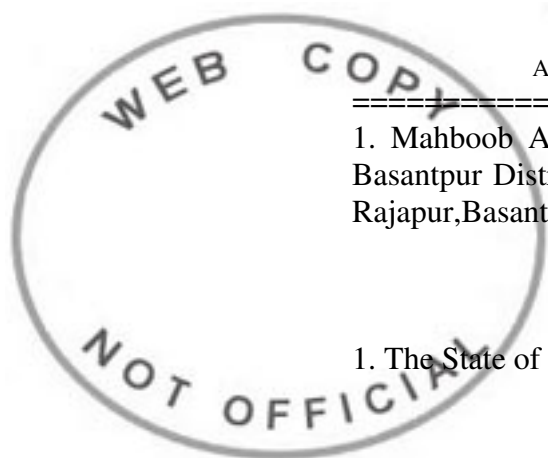




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.326 of 2015

Arising Out of PS.Case No. -12 Year- 2014 Thana -BASANTPUR District- SIWAN

1. Mahboob Ansari Son of Mohhamad Habib Resident of Village-Rajapur P.S-
Basantpur District-Siwan at present posted as teacher Govt.Higher Middle School
Rajapur,Basantpur Siwan

.... .. Petitioner/s

Versus

1. The State of Bihar

.... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Mishra
For the Opposite Party/s : Mr. Sanjay Kumar Pandey (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 08-09-2015

1. By filing the instant application under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 27.06.2014 passed by learned Chief Judicial Magistrate, Siwan in Basantpur P.S. Case No. 12 of 2014 whereby cognizance has been taken under Sections 341, 323 and 384 of the Indian Penal Code and the petitioner has been summoned to face the trial.

2. The case of the prosecution is based on a written report submitted by the informant Deepak Ram on 16.01.2014. It has been alleged that the petitioner was a Booth Level Officer and had taken Rs. 500/- from the informant on the pretext of correcting his name in the Electoral Roll and also adding the name of his children in the Electoral Roll. After taking Rs. 500/- he further demanded Rs. 500/-

for the aforesaid work, on which an altercation took place between them. The informant submitted his written report against the petitioner to the District Magistrate-cum-Election Officer, Siwan which was forwarded to the Police Station, pursuant to which Basantpur P.S. Case No. 12 of 2014 was registered under Sections 341, 323 and 384 of the Indian Penal Code and investigation was conducted.

3. It is contended that there is no truth behind the allegation made in the F.I.R. In the entire investigation conducted by the police, the statement of the informant was not recorded. The family members of the informant whose statements were recorded under Section 161(3) of the Code of Criminal Procedure have not supported the allegations made in the F.I.R. and there was no material on the basis of which the investigating agency could have submitted chargesheet against him.

4. Learned counsel for the State has opposed the application. He has submitted that in the written report the informant has made specific allegation that the petitioner who was a Booth Level Officer, took Rs. 500/- from the informant as illegal gratification. He has further contended that though witnesses have not supported the case during investigation, on the basis of allegation made by the informant, the ingredients of the offence under Section 7 of the Prevention of Corruption Act is attracted in the present case.



5. I have heard the respective counsel for the parties and perused the case diary. Admittedly, a written report was filed by the informant before the District Magistrate, Siwan which was forwarded by him to the Officer-in-charge of Basantpur Police Station, pursuant to which an FIR was instituted under Sections 341, 323 and 384 of the Indian Penal Code. Despite efforts made by the Investigating Officer, it would appear from the case diary that the statement of the informant could not be recorded.

6. Statement of mother of the informant, Jagiya Kunwar has been recorded in Paragraph-5 of the case diary. In her statement, she has stated that she does not know about any demand having been made from her son by the petitioner. Similarly, witnesses, namely, Bachchi Devi, Rajni Kumari, Mogal Ram and Dinesh Kumar Ram whose statements have been recorded in paragraph nos. 6, 7 and 8 of the case diary have not supported the informant's version.

7. I find that beyond the written report, no witness has come forward during investigation in support of allegation of demand or acceptance of any illegal gratification by the petitioner.

8. Under the facts and circumstances of the case, I fail to understand as to how the learned Chief Judicial Magistrate, Siwan could have taken cognizance of the offences punishable under sections 341, 323 and 384 of the Indian Penal Code. Apparently, the

impugned order has been passed without judicial application of mind.

9. In that view of the matter, the impugned order dated 27.06.2014 is hereby set aside. The application stands allowed.

(Ashwani Kumar Singh, J)

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