

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22236 of 2013

Arising Out of PS.Case No. -31 Year- 2006 Thana -PURNEA SADAR District- PURNIA

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1. Kamal Kishore @ Kishore Kumar Mandal Son Of Sitaram Mandal
 Resident Of Village - Maharajpur, P.S. - Purnea Sadar, District - Purnea
 Petitioner/s

Versus

1. The State Of Bihar
 2. Dilip Kumar Das Son Of Late Raghunandan Das Resident Of Post Office
 Mal Dwar, P.S. - Palasi, District - Araria

.... Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Anant Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 15-03-2016 Heard learned counsel for the petitioner as well as
 learned APP for the State.

2. Petitioner is aggrieved by order dated 15.11.2011
 passed by Sessions Judge, Purnea in Cr. Revision No.201/2011
 whereby the above referred Cr. Revision has been dismissed
 affirming the order dated 11.01.2011 passed by learned lower
 court disrobing the petitioner by way of rejecting the prayer so
 made under Section 239 of the Cr.P.C.

3. Learned counsel for the petitioner submits that
 before institution of the case, a preliminary enquiry was conducted
 but, during course thereof, neither handwriting nor signature of
 petitioner has been obtained as well as subjected to examination
 by an expert therefor, whatever allegation has been attributed to



the petitioner that he was the recipient of different money-orders which were prepared in fake manner in connivance with other postal staff, is found non-substantiated. Therefore, rejection of the prayer by the learned lower court affirming the same by the revisional court happened to be contrary to the spirit of law.

4. Learned APP opposed the prayer and submitted that 2nd revision is barred which, the petitioner unsuccessfully attempted to under the garb of Criminal Miscellaneous.

5. Different way for consideration of materials at different stages of the trial is found prescribed under the Code of Criminal Procedure and the same, by repeated judicial pronouncements laid down by the Hon'ble Apex Court have been affirmed.

6. So far stage of charge/discharge is concerned, as per, different judicial pronouncements, it is evident that ultimate result of the trial is not at all considerable at the stage of framing of charge rather, grave suspicion is found sufficient to proceed with the trial and for that purpose, the roving enquiry is non permissible.

7. Be that as it may, while appreciating the contention raised on behalf of petitioner/accused at the stage of Section 239 or 240 of the Cr.P.C., it is evident that the courts have been

permitted to filter from the materials collected during course of investigation and placed before the court in terms of Section 173 of the Cr.P.C and then thereafter, should conclude whether the allegation on its face appears to be groundless. If it is so, certainly, the accused is to be discharged and contrary to it, should be proceeded with the trial.

8. Now coming to the facts of the case, though, as disclosed above detailed enquiry is forbidden but there happens to be an allegation that petitioner in connivance with other postal staff succeeded in siphoning a huge amount of government money by way of preparing fake/forged money-orders of which the petitioner was recipient. That being so, much more than *prima facie* material is available on the record. Whether those money-orders forms have been prepared in the pen of petitioner is of no consequence as the aforesaid money-orders were found fake of which the petitioner was the recipient.

9. That being so, the present petition sans merit. Accordingly, the same is rejected.

(Aditya Kumar Trivedi, J)

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