

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.13409 of 2014**

Arising Out of PS.Case No. -273 Year- 2012 Thana -CHIRAIYA District-  
EASTCHAMPARAN(MOTIHARI)

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1. SAKALDEO RAI SON OF MOHAR RAI  
2. RAM VINAY RAI SON OF SAKALDEO RAI  
3. CHHATHU RAI SON OF SONA RAI  
4. RINA DEVI WIFE OF SAKALDEO RAI  
ALL ARE RESIDENTS OF VILLAGE- BAIDNATHPUR, P.S.-  
CHIRAIYA, DISTRICT- EAST CHAMPARAN

.... .... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR  
2. SATYANARAYAN BAITHA SON OF BISHWANATH BAITHA  
RESIDENT OF VILLAGE- BAIDNATHPUR, P.S.- CHIRAIYA,  
DISTRICT- EAST CHAMPARAN

.... .... OPPOSITE PARTY/S

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**Appearance:**

For the Petitioner/s : Mr. Sunil Kumar No.III, Adv.  
For the Opposite Party/s : Mr. Chandra Bhushan Pd., APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL ORDER**

5      19-11-2016                      Heard learned counsel for the petitioner as well as  
learned Additional Public Prosecutor.

Vide order dated 15.07.2013, the learned SDJM,  
Sikrahana at Motihari after differing from the police report took  
cognizance of an offence punishable under Sections 447, 341,  
323, 324, 504, 506, 34 of the IPC and 3(1)(x) of the SC ST Act  
in connection with Chiraiya P.S. Case No.273 of 2012 and  
summoned the petitioners whereupon instant petition has been  
filed.

It has been submitted on behalf of petitioner that  
during course of investigation, independent witnesses were  
examined by the I.O. who have not supported case of the  
prosecution and in the aforesaid background, final report was  
submitted by the I.O. Furthermore, it has also been submitted



that witnesses have stated that the son of the informant who was aged about 10 years as well as Ram Vinay Rai son of petitioner Sakaldeo Rai who was also aged about ten years were playing and during course thereof, as the son of the inflormant fallen down resulting some sort of altercation whereupon intentionally, malafidely, mischievously filed instant case by way of revengeful action. So submitted that in the aforesaid facts and circumstances of the case, the learned Magistrate should not have differed from the conclusion having been arrived at by the investigating officer as well as should not have taken cognizance of an offence. Thus, the order impugned is illegal, whereupon is fit to be set aside.

The learned Additional Public Prosecutor opposed the prayer and submitted that the learned lower court exercised its power so prescribed, in accordance of law hence did not require interference.

Virtually, judiciary has become puppet at the hands of the police, who commands exclusive command during course of investigation and further, act in an unbridle way, and the ultimate result of investigation is found duly influenced therewith. So far, present litigation is concerned, after going through the case diary it is evident that I.O. had not cared to examine any of the victim. Furthermore, as is evident, the diary begins with dated 22.11.2012 and up to para-10 it was scribed on the same day but subsequently thereof, from para-11 begins from 18.01.2013, from para-22 it begins from 30.01.2013 and on 31.01.2013, the final report was submitted.

In the aforesaid background, though the learned lower court had differed from the opinion so expressed by the investigating officer, but should have directed to reinvestigate the matter in the background f inefficiency of the Investigating Officer. Giving such liberty, the order impugned is set aside. Petition is allowed.

**(Aditya Kumar Trivedi, J.)**

Prakash Narayan

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