

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 9126 of 2012

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1. Ehtashamul Haque S/O Late Sheikh Yusuf Resident of Quarter No. 5H/149, Mathura Refinery Nagar, Mathura, P.S.- Mathura Refinery, District- Mathura (U.P.) 281006.

2. Shujaul Haque S/O Late Sakil Ahmad

3. Ziayul Haque S/O Late Sakil Ahmad

Both resident of Village and P.O.- Baswaria, P.S.- Lauriya, District- West Champaran. Petitioner no.3 C/o Javed Akhtar, B/47, Fatima Refinery Gorwa (Vadodara).

.... Petitioners

Versus

1. The State of Bihar

2. Sharik Kamal S/O Taufir Ahmand Resident of Village- Basbaria, P.S.- Lauriya, District- West Champaran (informant).

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ajay Thakur

Mrs. Babita Kumari

For the Opposite Party/s : Mr. Shantanu Kumar(App)

Md. Aslam Ansari

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

4. 08-11-2016 Heard Sri Ajay Thakur, learned counsel who was assisted by Smt. Babita Kumari, learned counsel for the petitioners, Sri Shantanu Kumar, learned Addl. Public Prosecutor as well as Md. Aslam Ansari, learned counsel, who has appeared on behalf of informant/opposite party no. 2.

Three petitioners have approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, with a prayer to quash an order dated 30-11-2011 passed by learned Chief Judicial Magistrate, Bettiah (hereinafter referred to as 'Magistrate') in Lauria P.S. Case No. 111

of 2011. By the said order, the learned Magistrate has taken cognizance of offence under Sections 323, 341, 504, 379/34 of the Indian Penal Code and transferred the case to the court of Sri A.K.Pathak, learned Judicial Magistrate 1st Class, Bettiah for its disposal and appearance.

It was submitted by learned counsel for petitioners that though in the F.I.R., all the three persons were arrayed as accused on allegation of commission of offence under Sections 341, 323, 379, 504, 34 of the Indian Penal Code, during investigation, accusation against petitioner no. 1 and 3 was not found true, whereas, final report was submitted by the police showing involvement of petitioner no. 2 for offences, which were bailable in nature. By way of referring to **Annexure - 2** to the present petition, he submits that report was submitted for bailable offence under Sections 323/504 of the Indian Penal Code, however; the learned Magistrate, without application of mind has taken cognizance of offence under Sections 323, 341, 504, 379/34 of the Indian Penal Code. He submits that it is a case of complete non-application of mind by the learned Magistrate.

In this case, earlier case diary was called for, which has been received and kept on record. Learned Addl. Public Prosecutor as well as learned counsel appearing on behalf of informant/opposite party no. 2 has referred to certain paragraphs

of the case diary and submits that there are materials to show commission of offences under Sections 379/34 of the Indian Penal Code showing involvement of all the petitioners. It has also been argued that order impugned is not a result of non-application of mind, rather the learned Magistrate, while passing the order of cognizance, has referred name of number of witnesses, who have corroborated the allegation.

Besides hearing, I have also perused the materials on record, particularly the impugned order as well as case diary.

In view of facts and circumstances, I find that there is no apparent error in the order impugned.

The petition stands dismissed.

In view of dismissal of this petition, interim order of stay dated 14-05-2012 stands vacated.

(Rakesh Kumar, J.)

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