

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14638 of 2014

Arising Out of PS.Case No. -381 Year- 2010 Thana -KISHANGANJ District- KISANGANJ

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1. Ashish Bhagat son of Ganesh Bhagat, resident of Village- Gamhariya (Madanpur), P.S.- Araria, District- Araria
 2. Md. Moinuddin @ Moinuddin, son of Md. Gudari, resident of Village- Dehati, P.S.- Palasi, District- Araria

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sada Nand Ray

For the Opposite Party/s : Mr. Arun Kumar Singh 5 (App)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

8 09-08-2016

Heard Sri Bikramdeo Singh, learned counsel, who

was assisted by Sri Sada Nand Ray, learned counsel for the petitioners and Sri Arun Kumar Singh, learned Addl. Public Prosecutor.

Two petitioners have approached this Court, invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 06.01.2014 passed by the learned Sub Divisional Judicial Magistrate, Kishanganj in Kishanganj P.S. Case No.381/10, G.R. No.1217/10. By the said order, the learned Magistrate has rejected the petition for discharge filed on behalf of the petitioners.

Short fact of the case is that on the basis of written



report, an F.I.R. was lodged vide Kishanganj P.S. Case No.381/10 for the offence under Sections 414 and 120B of the Indian Penal Code. It was alleged that a tractor, bearing Registration no.BR-11E-7557 with trailer No.BR-11E-7558 was stopped for checking. The said tractor was loaded with certain bags of fertilizer. Thereafter, the driver of the vehicle left the place and none appeared. It was suspected that bags of fertilizer were stolen and, as such, an F.I.R. was lodged.

After investigation, the police submitted chargesheet. At the stage of charge, a petition was filed for discharge on behalf of the petitioners, mainly on the ground that the tractor in question as well as seized fertilizer were already released to their respective owners. In respect of fertilizer, by way of referring to order dated 29.03.2011, learned counsel for the petitioners submits that said fertilizer was released in favour of Mr. B. Bhowmik, who had produced certain papers to show *bona fide* purchaser of the fertilizer. He submits that before release, the matter was got inquired by the police also and this fact has come in the enquiry that fertilizer was purchased from a particular dealer and, thereafter, fertilizer was released. It has been argued that once the fertilizer, which was seized on an accusation that the said fertilizer were stolen, has been released to the owner of the

fertilizer, who had never alleged that the said fertilizer were stolen, there is no reason to forward the petitioners as accused. Accordingly, he submits that there is no application of Sections 414 of the Indian Penal Code in the present case.

Learned Addl. Public Prosecutor, opposing the prayer of the petitioners, tried to persuade the Court that during investigation, it has come that the accused persons were using to fabricate documents. However, to this extent, there is no cogent material in the case diary.

Keeping in view the fact that the fertilizer, which was allegedly stolen, has already been released along with the vehicle in question and during investigation, nothing has been indicated as to whether the fertilizer was stolen or not, there is no reason to allow the proceeding to proceed against the petitioners.

Accordingly, the order dated 06.01.2014 passed by learned Sub Divisional Judicial Magistrate, Kishanganj in Kishanganj P.S.Case No.381/10, G.R. No.1217/10 is hereby set aside and the petitioners are discharged from criminal proceeding.

It was informed that the petitioners are on bail. Accordingly, they are discharged from their bail bond.

(Rakesh Kumar, J)

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