

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 17375 of 2013

Arising Out of PS.Case No. -3 Year- 2013 Thana -SC/ST District- PURNIA

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Dr. Asad Imam S/O Late Md. Atique R/O Mohalla - Line Bajar, Naya Tola, Police Station - Sahayak (Khajanchi Hat), Town and District – Purnea.

.... Petitioner/s

Versus

1. The State of Bihar
2. Vimal Kumar Paswan S/O Late Ram Lakhnan Paswan R/O Mohalla - Sahwan Tola, Navaratan Hata, Police Station - Khajanchi Hat Town and District – Purnea.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Rashid Izhar
Mr. Tabish Sharfuddil
For the Opposite Party/s : Mr. Madan Kumar (App)
Mr. Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

8. 15-11-2016 Heard Mr. Rashid Izhar, learned counsel for the petitioner, Sri Madan Kumar, learned Addl. Public Prosecutor as well as Sri Binod Kumar Jha, learned counsel, who was appeared on behalf of informant/opposite party no. 2.

The present petition was filed under Section 482 of the Code of Criminal Procedure, 1973 initially with a prayer to quash entire prosecution arising out of SC/ST Purnea P.S. Case No. 03 of 2013 registered for offence under Section 447, 420 of the Indian Penal Code and Sections 3(i) (iv) (v) (xv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.



Learned counsel for the petitioner admits that on the date of filing of the present petition, chargesheet was not submitted, however; during pendency of this petition, after investigation, police submitted chargesheet and thereafter, order of cognizance was passed. Learned counsel for the petitioner submits that after order of cognizance dated 17-09-2013, the petitioner filed a supplementary affidavit on 16th October, 2015. In the said supplementary affidavit, the petitioner has also made a prayer for quashing of order of cognizance. Mr. Izhar, learned counsel for the petitioner at the very outset, by way of referring to F.I.R. submits that as per F.I.R., it is evident that in a civil dispute, colour of criminal offence has been given. He has also relied on a report submitted by the Anchal Amin in an encroachment proceeding, who has referred in the said report that the purchased area of land of certain plot is beyond its measurement and as such, it would be difficult to design the map. That can be decided by the competent court only. Accordingly, he submits that entire proceeding, including order of cognizance, is liable to be set aside.

However, learned Addl. Public Prosecutor as well as learned counsel appearing on behalf of informant/opposite party no. 2 have opposed the prayer of petitioner. Learned counsel for opposite party no. 2 submits that in the case diary, there is material to suggest commission of offences and after collecting materials

showing commission of offences, police submitted chargesheet. Only thereafter, cognizance order has been passed and as such, order of cognizance may not be interfered with.

Besides hearing, I have also perused the materials on record. Fact remains that present petition was filed at the time when no prosecution was initiated. The present petition was filed on 18-04-2013, whereas, as per supplementary affidavit, cognizance order was passed in the month of September, 2013. Moreover, once police, after collecting materials showing commission of offences, had submitted chargesheet and the learned Magistrate had taken note of police report, meaning thereby that cognizance order was passed. Unless there is any jurisdictional error or apparent error in the order, it would be difficult for this Court to interfere with the same order. Moreover, by way of supplementary affidavit, a relief may not be allowed to be amended. For the said purpose, proper course was to file a petition for amendment.

However, after going through the materials on record, I do not find any ground to pass any favourable order.

The petition stands dismissed.

(Rakesh Kumar, J.)

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