

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9613 of 2014

Arising Out of PS.Case No. -82 Year- 2011 Thana -MANIHARI District- KATIHAR

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Md. Zafar Alam S/O Late Sulman R/O Village- Idgah Patni, P.S.- Manihari,
District- Katihar

.... Petitioner

Versus

1. The State of Bihar
2. Mrs. Fudki, wife of Amiruddin, resident of Edgah Patni, P.S.- Manihari,
District- Katihar.

.... Opposite Party

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Appearance :

For the Petitioner	:	Mr. Bal Krishna Mishra, Advocate
		Mr. Karuna Kant Jha, Advocate
For the O.P. No.2	:	Mr. Ajeet Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 16-01-2017

Heard learned counsel for the petitioner as well as
learned counsel appearing on behalf of opposite party no.2 and
learned counsel for the State.

It is application for quashing cognizance order dated
07.12.2011 passed in Manihari P.S. Case No.82 of 2011, G.R. Case
No.1670 of 2011 (State Vrs. Md. Zafar Alam and others) registered
under Sections 341, 323, 379, 354, 506, 504 and 34 of the Indian
Penal Code summoning five accused persons, namely, Md. Wahid
Ali, Md. Yasin, Md. Hasan, Md. Sikandar and Md. Ilyas.

Learned counsel appearing on behalf of the petitioner
submits that there is no material in the case diary on conclusion of the



investigation against the petitioner relating to any commission of any criminal offence. It is alleged in the F.I.R. by the mother of Md. Razaqqe that Md. Zafar Alam and Md. Mustafa put towel around the neck of Razaqqe and tried to strangle by pulling each side of the towel in the opposite directions but the statement of the alleged victim Md. Razaqqe recorded in paragraph-35 of the case diary has not whispered any overt act against these two accused persons. Moreover, police after completion of the investigation not finding the case true against this petitioner and other three accused submitted final form against them; rather evidence is available in this case against only two accused Md. Shahabuddin and Md. Moquim; so mechanically, the cognizance has been taken by the learned Magistrate without any material for the continuance of the criminal proceeding against the petitioner hence it would be abuse of the process of the Court.

Learned counsel appearing on behalf of the opposite party no.2, Mr. Ajeet Kumar Singh submits that there is allegation in the F.I.R. against this petitioner also but concedes that in paragraph-35 of the case diary Md. Razaqqe has not made any accusation against the petitioner.

Considering the submissions of the learned counsel of both sides and the material on record, I find substance in the submission of the learned counsel for the petitioner. The allegation of



assault by the petitioner is not supported by the so-called victim Md. Razaque in his statement given before the police recorded in paragraph-35 of the case diary and police, rightly after conclusion of the investigation, finding no prima facie evidence against the petitioner and other three accused persons not submitted charge sheet against them. The learned Magistrate has failed to discuss any material available in the case diary to disagree with the conclusion reached by the Investigating Officer. However, cognizance is taken of the offence and not of offender but at the same time a Magistrate takes cognizance with reference to offence finding a prima facie case being made out against accused person from contents of report submitted by police after investigation under Sub-Section (2) of Section 173 of the Cr.P.C.

In view of the aforesaid discussions, I find that the learned Magistrate has taken cognizance mechanically without going through the evidence collected during investigation and has issued summons to the petitioner to appear for facing trial without giving any reason of disagreement with the police report; so continuance of criminal proceeding against the petitioner would be abuse of the process of the Court hence this cognizance order so far this petitioner is concerned, is quashed. Moreover, the cognizance order so far accused Md. Mustak, Sitara Salim and Shahabuddin not petitioners in



the application but are similarly placed having similar evidence collected during the investigation by police so cognizance taken against them is also bad, without any prima facie material so cognizance order with respect to them is also quashed in order to prevent abuse of the process of the Court in order to secure the ends of justice but I do not find any illegality with the order taking cognizance so far as accused Shah Alam and Md. Moquim is concerned so further criminal proceeding will continue against them in order to ascertain truth of allegation levelled against them.

In the result, this quashing application is allowed with the aforesaid observation.

(Arun Kumar, J)

N.H./-

AFR/NAFR	
CAV DATE	
Uploading Date	20-02-2017
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