

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48376 of 2013

Arising Out of PS.Case No. -23 Year- 2013 Thana -KARJA District- MUZAFFARPUR

- =====
1. Aditya Kumar Singh @ Aditya Kumar Son Of Hari Mohan Singh
 2. Hari Mohan Singh Son Of Vidya Singh
 3. Vidya Singh Son Of Ram Sevak Singh
- All are Resident of Village - Rakshadih, P.S. Karja, District - Muzaffarpur

.... Petitioners

Versus

1. The State Of Bihar
2. Robin Kumar Singh, Son Of Birbal Singh, Resident Of Village - Rakshadih, P.S. Karja, District - Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Sunil Kumar, Advocate

For the Opposite Parties : Mr. S.M.Rahman (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

6 18-05-2017 The instant Criminal Miscellaneous application has been filed for quashing the order dated 22.05.2013 passed by the learned S.D.J.M., Muzaffarpur West in Karja P.S. Case No. 23 of 2013 (G.R. No. 256 of 2013) by which the learned S.D.J.M. has taken cognizance of the offences punishable under Sections 323, 341, 342, 307, 504/34 of the Indian Penal Code.

Heard the learned counsel for the petitioners, the learned A.P.P. for the State and the learned counsel for the informant/opposite party no.2.

On behalf of petitioners it is submitted that chargesheet was not submitted under Section 307 of the Indian Penal Code and



further the petitioner Vidya Singh was not sent up for trial but in spite of that without assigning any reason cognizance has been taken even under Section 307 Indian Penal Code against all including that Vidya Singh. Further it is submitted that the impugned order is a mechanical order written by the Bench Clerk and the learned Magistrate has only written the words “*Sangyan*” and further “*Niji Sanchika*”. Neither the impugned order is in the pen of the learned Magistrate nor it has been dictated by him and in casual manner the same has been signed.

The learned A.P.P. fairly submits that the impugned order is a mechanical order. The learned counsel for the opposite party no. 2, on the other hand, submits that the learned Magistrate has got power to differ with the finding of the Investigating Officer and after considering the material available in the case diary passed the impugned order and, as such, there is no need of any interference.

Having considered the submission urged at the Bar, going through the record and impugned order it is manifest that the impugned order has been written by the concerned Bench Clerk and the learned Magistrate has only written the word “*Sangyan*” and thereafter in 2nd line “*Niji Sanchika*” and has simply signed the impugned order without applying his judicial



mind further the learned Magistrate has written in the impugned order that chargesheet has been submitted under Section 323, 341, 342, 307 and 504 of the Indian Penal Code but bare perusal of chargesheet shows that it has been submitted under sections 323, 341, 342, 325, 504/34 of the Indian Penal Code and as such the same has not been submitted under Section 307 of the Indian Penal Code and, as such, on this ground alone the impugned order is hereby quashed.

The matter is remitted back to the learned S.D.J.M. or his successor with a direction to pass a fresh order in accordance with law after considering the materials available on the record.

In the result, this criminal miscellaneous is hereby allowed with the direction made above.

(Jitendra Mohan Sharma, J)

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