

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32448 of 2013

Arising Out of PS.Case No. -169 Year- 2009 Thana -PIRBAHOR District- PATNA

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Dr. Azhar Hassan, S/o Md. Noor Hasan, Resident of Nilam Chauk, Pani Tanki Road, Police Station- Kotwali, District- Monghyr (Munger), At Present Residing And Practicing At Canal Road, Dehri, District Rohtas.

.... Petitioner

Versus

The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Saurabh Kumar, Advocate

For the Opposite Party : Mr. Madan Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 02-02-2017

This application has been filed for quashing the order dated 21.11.2009 passed by learned Chief Judicial Magistrate, Patna in Pirbahore P.S. Case No. 169 of 2009 whereby the court below found prima-facie case against the petitioner and other accused persons for the offence under Sections 341 and 323/34 of Indian Penal Code.

It has been submitted by the counsel for the petitioner that he is not named in the First Information Report. In the entire case, there is no murmuring of his name by any of the witnesses. The police has submitted charge sheet against the petitioner merely stating that he learnt about the name of the petitioner from one *Guptchar*. He has further submitted that the case is pending in the lower court since 2009. The substance of accusation was explained to the accused on



17.01.2014 for offence under Sections 341, 323/34 of the Indian Penal Code. Thereafter, not a single witness has been examined.

The learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the matter of **Kadra Pahariya & ors vrs. State of Bihar & ors.**, reported in **1991 (2) PLJR (SC) 85**, wherein the reference was made about the affidavit filed by the State Government in the Supreme Court for withdrawal of those cases which do not warrant punishment for more than five years and which are pending in different courts for five years or more and which do not involve any public policy.

Learned APP has submitted that court below has taken cognizance after looking into the case diary.

Perused the impugned order as well as the written report and the material available in the case diary.

Lower court record has also been called for which has been received.

The petitioner is not named in the written report. The written report has been filed against unknown alleging that some altercation took place in PMCH during treatment of the patient. In the case diary, none of the witness disclosed the name of this petitioner about his involvement in the aforesaid occurrence. The police has mentioned in para-22 of the case diary that one of the "Guptchars" has disclosed the name of this petitioner being involved in the occurrence



and only on aforesaid material, the police submitted charge sheet against the petitioner for the offence under Sections 341, 323/34 of Indian Penal Code.

From perusal of the lower court record it appears that the case is pending since 2009. The substance of accusation was explained to the accused on 17.01.2014. Thereafter, not a single witness has turned up in the court. In such circumstances, on the basis of materials available on the record and the discussions made above, this Court finds that continuance of the criminal proceeding against the petitioner will be mere harassment to him. Accordingly, the order of cognizance dated 21.11.2009 along with entire proceeding of Pirbahore P.S. Case No. 169 of 2009, with regard to petitioner is hereby quashed.

The application stands allowed.

(Sanjay Priya, J.)

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