

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20439 of 2014

Arising Out of PS.Case No. -785 Year- 2009 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

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Mahesh Thakur @ Mahesh Kumar Diwakar, Son of Ram Narayan Thakur,
R/O village - Pathrahi, P.S. Ladaniya, District - Madhubani.

.... Petitioner

Versus

1. The State of Bihar
2. Yogendra Thakur, Son of late Basudeo Thakur, R/O village - Pathrahi,
P.S. Ladaniya, District - Madhubani.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Naresh Dikshit, Advocate

For the Opposite Parties : Mr. Madhuri Lata (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

4 02-11-2017 This criminal miscellaneous has been filed for setting aside the order dated 06.07.2010 passed in Trial No. 1782 of 2013 arising out of Complaint Case No. 785 of 2009 by Sri Sanjiv Kumar, the then learned Judicial Magistrate, 1st Class, Madhubani, whereby and whereunder the learned Magistrate after finding prima facie case to be made out against the accused persons including the petitioner under Section 323/427/504 of the I.P.C. has been pleased to order to issue summon against the accused persons including the petitioner.

From perusal of certified copy of the order of learned Court below, it reveals that after the order dated 06.07.2010 the petitioner and other accused have appeared before the learned



Court below and they have been allowed bail and further by order dated 20.11.2010 and further on that date substance of accusation was also explained and, as such, the status of the case has been changed and now the record is fixed for evidence. After perusal of the order dated 06.07.2010 and record it reveals that the complainant on solemn affirmation and the inquiry witnesses have supported the allegation as made out in the complaint petition and after considering the materials available on record the learned Court below has found prima facie case under Sections 323, 427, & 504 of the I.P.C. to be made out against the accused persons including the petitioner. The petitioner after that order surrendered in the Court below along with other co-accused and has been granted bail and thereafter substance of accusation has also been explained to which the petitioner and others denied and now the record is going on for evidence. By order dated 23.06.2017 further proceeding of trial No. 1782 of 2013 has been stayed.

On behalf of the petitioner it is submitted that the petitioner is employee in the Central Government after M. Tech. from I.I.T., Kharagpur and his presence before the trial Court will be misuse of the process of law. The order taking cognizance is bad in law and, as such, same is fit to be set aside.

On the other hand, the learned A.P.P. submits that after



the order dated 06.07.2010 the petitioner and other accused surrendered in the Court below and they have been granted bail and further substance of accusation have already explained and, as such, the status of the case has been changed. The petitioner is not required to remain present on each and every date and, as such, the petitioner is not going to suffer any loss and he has to face the trial.

Having considered the submission urged at the Bar, going through the impugned order and record it is manifest that the order dated 06.07.2010 has been passed after considering the materials available on record, the learned Magistrate has perused the complaint petition, statement of complainant on solemn affirmation and the statement of two inquiry witnesses and after considering the same has passed the impugned order which appears quite proper, legal and justified. There is no need for any interference in the said order by this Court. The status of the case has also been changed and, as such, finding no merit in this criminal miscellaneous, the same stands dismissed.

(Jitendra Mohan Sharma, J.)

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