

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.53962 of 2013**

Arising Out of PS.Case No. -3 Year- 2009 Thana -PATNA COMPLAINT CASE District- PATNA

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Md. Abu Bakr Arif S/O Late Md. Shoib Alam Resident Of Mohalla Sanda Nagar Colony, New Azimabad, P.S. Sultanganj, District Patna Assistant Teacher, Sir G.D. Patliputra Sanior Secondary School At Kadam Kuan, Patna.

.... .... Petitioner/s

Versus

1. The State Of Bihar.
2. Sri Ram Prishna Prasad S/O Srilal Prasad Assistant Teacher, Sir G.D. Patliputra Senior Secondary School, Kadam Kuan, Patna Resident Of Lal Bhawan Near Bihar Club (Krishana Puri), P.S. Bihar Sharif, District Nalanda. At Present Resident Of Mohalla Maruti Nagar, Chirayantan East Of Baijnath Bhawan, Kankarbagh, P.S. Kankarbagh, District Patna.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Brij Nandad Prasad  
For the Opposite Party/s : Mr. M.K.Nirala (App)

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**  
**ORAL ORDER**

2      24-04-2017

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 31.07.2013, passed by the Judicial Magistrate, 1<sup>st</sup> Class, Patna in Complaint Case No. 3(C) of 2009, whereby the learned Judicial Magistrate has rejected the prayer of the complainant/petitioner to get the photo copy of documents as filed by the complainant/petitioner to be exhibited by producing original documents in possession of officer concerned such as R.D.D.E. and D.S.E. of the Patna District.

From the impugned order, it appears that the



complainant/petitioner has filed photocopy of certain documents which were marked for identification. Thereafter complainant/petitioner filed a petition under Section 244(2) of the Cr.P.C. for calling the original of those documents from the office of R.D.D.E Patna for marking those documents as exhibits. The aforesaid petition was rejected by the Court below. The Court below has rejected the aforesaid petition on the ground that onus is on complainant/petitioner to produce the paper before the Court in support of case.

Section 244(2) Cr.P.C is very specific and speaks as follows:-

*“The Magistrate, may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.”*

The complainant/petitioner has alleged in the complaint petition that opposite party no. 2 has obtained Diploma in Technology certificate fraudulently in the year 1976 from L.N. Mithila University, Darbhanga bearing Roll No. 79, although at that time he was not teacher in the school.

The cognizance has been taken on the basis of complaint filed against the opposite party no. 2 for the offence under Sections 420, 467, 468, 471, 474 of the Indian Penal Code.



The photocopy of the documents has been filed by the complainant/petitioner which was in his possession and they have been marked for identification. The original of those documents are public documents which are available in the office of R.D.D.E, Patna Pramandal, Patna.

In such circumstances, the prayer was made by the petitioner before learned Magistrate to call for those original documents from the office of R.D.D.E, Patna Pramandal, Patna for getting the photo copy of documents filed by him verified from the original and the same be marked as exhibit.

This Court is of the view that since original documents are not available with the complainant/petitioner and complainant/petitioner has submitted before lower Court that those documents are available in the office of R.D.D.E, Patna Pramandal, Patna, it was not possible for the complainant/petitioner to produce those documents from his own capacity.

In such circumstance, the rejection of the prayer of the complainant/petitioner by the Court below on the plea that onus is on the complainant/petitioner to produce the original documents was not justified.

Accordingly the order dated 31.07.2013, passed



by the Judicial Magistrate, 1<sup>st</sup> Class, Patna in Complaint Case No. 3(C) of 2009 is hereby set aside.

The Court below is directed to take steps to call for the original documents as prayed by the complainant/petitioner in his petition under Section 244(2) Cr.P.C filed before learned Court below on 22.03.2013, so that the same may be produced before the Court below within a period of two months from the date of receipt/production of a copy of this order. The Court below will thereafter proceed with the trial in accordance with law and make efforts to conclude the same expeditiously without giving unnecessary adjournment to either party.

This quashing application is, accordingly, allowed with aforesaid observation.

**(Sanjay Priya, J)**

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