

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25460 of 2011

Arising Out of PS.Case No. -290 Year- 2010 Thana -null District- PURNIA

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Saket Kumar @ Saket Sharma @ Saket Kumar Sharma, S/O Shiv Kumar Sharma,
C/O Chandika Store, Gulab Bag, P.S.- Sadar, District- Purnia.

.... Petitioner

Versus

1. The State of Bihar
2. Mahboob Alam Khan, S/O Late Sauf Alam Khan, At Present Posted As SHO,
K. Nagar, P.S.- K. Nagar, District- Purnia.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Radha Mohan Singh, Advocate
For the Opposite Party : Mr. A. Mohan, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. This application has been filed under Section
482 of the Code of Criminal Procedure to quash the order dated
10.01.2011 passed in K. Nagar P.S. Case No. 290 of 2010 (G.R. No.
2504 of 2010), whereunder the Chief Judicial Magistrate, Purnia
took cognizance for the offence under Sections 413, 414, 171-E, 171-
F and 120-B/34 of the Indian Penal Code and Section 123 and 126
of the Representation of the People Act against the petitioner and
four others named in the F.I.R.

3. The facts leading to this application are that O.P.
No.2 Mahboob Alam Khan, Officer-in-Charge of K.Nagar Police
Station recorded his self-statement to the effect that on 09.10.2010



at about 10.40 P.M., in course of night patrolling duty, one Maruti Zen Car bearing Reg. No. BR-16M-0027 was seen coming towards Purnia. On giving the signal, the said vehicle was stopped in which four persons were sitting, who disclosed their names (1) Nitin Kumar Jaiswal, (2) Shiv Narayan Sah, (3) Sundar Lal Baidh and (4) Dilip Choudhary. On search, one bag was found with Nitin Kumar Jaiswal. Thereafter, the bag was opened and cash of Rs. 2,90,000/- was recovered to the bag. On enquiry regarding the cash kept in the bag, Nitin Kumar Jaiswal and his associates disclosed that they are businessman of "Patua" and after selling the "Patua", the seized cash was received to Saket Sharma (Petitioner), Proprietor of Chandika Store, Gulabbag, P.S. Sadar, District-Purnia. The informant raised suspicion about carrying of cash keeping in bag on the occasion of election and distributing the same among the voters of the locality.

After investigation, the Police submitted Chargesheet under Sections 413, 414, 171-E, 171-F and 120-B/34 of the Indian Penal Code and Section 123 and 126 of the Representation of the People Act against Nitin Kumar Jaiswal, Shiv Narayan Sah, Sundar Lal Baidh and Dilip Choudhary and submitted the Final Form against the Saket Sharma (Petitioner).

4. On perusal of the materials available in the case diary, the learned Chief Judicial Magistrate, Purnia took the cognizance of the offence under Sections 413, 414, 171-E, 171-F and



120-B/34 of the Indian Penal Code and Section 123 and 126 of the Representation of the People Act against five accused named in the F.I.R., including the petitioner.

5. Learned counsel for the petitioner submits that it would appear from the F.I.R. and case diary that four persons, who were apprehended by the informant to the Maruti Zen Car disclosed that the seized cash of Rs. 2,90,000/- was received to the petitioner Saket Sharma on selling of "Patua". While Police official have supported the prosecution case, whose statements are detailed in paragraph Nos. 5 to 11 of the case diary, but in paragraph No. 31 of the case diary, Sushil Kumar Pugalia have stated that he had given cash of Rs. 3,00,000/- to this petitioner for handing over the same to Nitin Kumar Jaiswal. Further submission is that the witnesses in paragraph Nos. 54, 55 and 56 have also stated about handing over the money by this petitioner to accused Nitin Kumar Jaiswal. As such, there is no evidence available in the case diary for constituting the offence under Sections 413, 414, 171-E, 171-F and 120-B/34 of the Indian Penal Code and Section 123 and 126 of the Representation of the People Act. Further submission is that the seized Maruti Zen car is released on 27.12.2010 by the Court below in favour of Nirmal Kumar Jaiswal and the seized Rs. 2,90,000/- has also been released in favour of Nitin Kumar Jaiswal on 27.04.2012 in the light of order dated 27.10.2010 passed in Criminal Miscellaneous No. 7106 of 2001.



6. On the other hand, learned A.P.P. for the State submits that several witnesses have been examined in course of investigation as appears from the case diary, the Police official have supported the prosecution case as narrated in the F.I.R., but independent witnesses, including Sushil Kumar Pugalia, whose statement has been recorded in paragraph 31 of the case diary have stated about handing over the cash of Rs. 2,90,000/- by this petitioner to accused Nitin Kumar Jaiswal on the instruction of Sushil Kumar Pugalia.

7. On perusal of the record it appears that there is no material in the case diary to show that the alleged seized money was being carried by the F.I.R. named accused Nitin Kumar Jaiswal, Shiv Narayan Sah, Sundar Lal Baidh and Dilip Choudhary for distributing the same among the voters and it has come that the seized money was handed over by the petitioner to Nitin Kumar Jaiswal on the instruction of Sushil Kumar Pugalia. As such prima facie no offence under Sections 413, 414, 171-E, 171-F and 120-B/34 of the Indian Penal Code and Section 123 and 126 of the Representation of the People Act is made out against the accused persons named in the F.I.R., including the petitioner. As such impugned order taking the cognizance against the petitioner and other four accused named in the F.I.R. is illegal.

8. In the result, the impugned order dated 10.01.2011 passed in K. Nagar P.S. Case No. 290 of 2010 (G.R. No.



2504 of 2010), whereunder the Chief Judicial Magistrate, Purnia took the cognizance for the offence under Sections 413, 414, 171-E, 171-F and 120-B/34 of the Indian Penal Code and Section 123 and 126 of the Representation of the People Act against the petitioner and other four accused named in the F.I.R. and entire criminal proceeding is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.11.2017
Transmission Date	13.11.2017

