

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23084 of 2011

Arising Out of PS.Case No. -481 Year- 2008 Thana -null District- MADHEPURA

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1. Ramanuj Singh S/O Nrip Nandan Prasad Singh Resident Of Chhoti Aighu, P.O-
Mohan Aighu, P.S- Begusarai, District- Begusari, Presently Posted As Supply
Inspector Within The District Of Rohtas.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Officer Incharge Madhubani Town, Police Station- Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Dineshwar Mishra, Advocate. Mr. Surendra Mishra, Advocate
For the State	:	Mr. Rana Randhir Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 23-06-2017

1. Heard learned counsel for the petitioner and learned
counsel, appearing for the State.

2. The present application has been filed for quashing the
order dated 04-01-2010 passed by the learned Chief Judicial
Magistrate, at Madhubani in Madhubani P.S. Case No. 481 of 2008,
by which and whereunder, the learned Magistrate took cognizance
against the petitioner for the offence under Sections-224, 225 and 420
of the Indian Penal Code.

3. The petitioner was Supply Inspector, Madhubani at the
relevant time. In course of official duty, he seized one drum of
Kerosene oil which was allegedly taken for black-marketing purpose.



He got registered a case in the Police Station being Madhubani Town P.S. Case No. 386 of 2005 for the offence under Section-7 of E.C. Act against Subhan, Thela Vendor and one Ram Narayan Khagra and the aforesaid case was got lodged by the informant (petitioner in this case) on 01-12-2005. Thereafter, the case was investigated by the police.

4. It has been submitted on behalf of the petitioner that in that case, police has already submitted charge sheet against the accused persons. After investigation of the case, the informant in this case who is the Assistant Sub Inspector, Madhubani Town Police Station, lodged the FIR against the petitioner on 18-09-2008 after delay of about three years alleging therein that during course of investigation, several irregularities have come in light. The petitioner left the Thela vendor after seizure of Kerosene oil, which shows that this petitioner in order to save the main culprit Richpal Khandelwal, a wholesale dealer, has left the Thela vendor and made Madanlal Khandelwal as witness of the seizure list and one innocent person, Ram Narayan Khagra was made accused on the statement of Thela vendor. Thereafter, on the basis of aforesaid FIR, police proceeded in the investigation and submitted charge sheet. The learned Magistrate in mechanical manner on submission of charge sheet took cognizance against the petitioner for the offence under Sections-224/420 of the



IPC.

5. It is an admitted position that prior to taking cognizance against the petitioner, no sanction order was granted by the competent authority in terms of provisions of Section-197 of the Cr.P.C.

6. Counsel for the petitioner has relied upon decisions reported in *2007(1) PLJR 338 (Atul Krishna Biswas Vs. State of Bihar & Anr.)* and *2007(1) PLJR 555 (Rajesh Kumar Singh Vs. Bhola Kumar Yadav)* and also a decision of Apex Court reported in *2006(1) SCC 557 (Rakesh Kumar Mishra Vs. The State of Bihar & Ors.)* and has argued that without sanction, the order of cognizance is wholly illegal and, is unsustainable in the eye of law.

7. This court, after perusal of FIR filed against this petitioner by the ASI, Madhubani Police Station, finds that police merely on its own opinion during investigation has lodged a case against this petitioner and filed charge sheet and, thereafter, the court below also took cognizance without obtaining any sanction against the petitioner from the competent authority for prosecution in terms of provisions of Section-197 of the Cr.P.C.

8. From the FIR dated 01-12-2005 lodged by this petitioner, it will appear that he had performed his official duty by seizing one drum Kerosene Oil which was being taken for black-marketing and after lodging the FIR, he sent the information to the



District Magistrate about the lodging of the case and also prepared seizure list. Thereafter, it was the duty of the police to properly investigate the case and to collect the material against the accused. It has been submitted by the petitioner that police in that case after investigation, submitted charge sheet against accused persons as named in the case finding the case true. In that event, the lodging of the FIR by the informant against this petitioner by mentioning facts that during investigation, the role of the petitioner was found to be doubtful, and he has acted in casual manner to help the wholesale dealer Richpal Khandelwal, appears to be motivated and without any basis. Moreover, for prosecution against the government servant, it was duty of the I.O. to obtain sanction from the competent authority in terms of provisions of Section-197 of the Cr.P.C. The police proceeded against the petitioner after filing the case without obtaining sanction as required u/S 197 Cr.P.C. The court below also after submission of the charge sheet took cognizance in the mechanical manner without sanction against the petitioner by order dated 04-01-2010.

9. In view of aforesaid facts, the impugned order dated 04-01-2010 taking cognizance against the petitioner is not in accordance with law.

10. Accordingly, the impugned order dated 04-01-2010



passed in Madhubani Town P.S. Case No, 481 of 2008 passed by the learned Chief Judicial Magistrate, at Madhubani along with entire criminal proceeding against the petitioner is quashed.

11.This quashing application is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	14-07-2017
Transmission Date	14-07-2017

