

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44800 of 2013

In the matter of an application under section 482 of the Code of Criminal Procedure, 1973

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Birendra Pandit S/O Jagdish Pandit Resident Of Village Aliganj, P.S. Chandradeep,
District Jamui.

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

with

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Criminal Miscellaneous No. 52503 of 2013

Arising Out of PS.Case No. -372 Year- 2009 Thana -SIKANDARA District- JAMUI

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Birendra Pandit S/O Jagdish Pandit R/O Village - Aliganj, P.S. Chandradeep, Distt.
- Jamui

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.44800 of 2013)

For the Petitioner/s : Mr. Prabhat Ranjan Singh

For the Opposite Party/s : Mr. Nasim Yahia, APP

(In Cr.Misc. No.52503 of 2013)

For the Petitioner/s : Mr. Prabhat Ranjan Singh

For the Opposite Party/s : Mr. M. Haque, APP

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date: 18-07-2017

Heard learned counsel for the parties.

Petitioner, by means of these applications under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 26.08.2013, passed by *Ad hoc* Additional Sessions Judge 4th, Jamui in Criminal Revision No. 5 of 2012, whereby the order dated



16.09.2011 passed by Chief Judicial Magistrate, Jamui has been affirmed and to quash the order dated 16.09.2011 passed by Chief Judicial Magistrate, Jamui in Case No. 285C of 2011 whereby final form submitted against the petitioner (informant) has been accepted.

The contention of the learned counsel for the petitioner is that the order impugned has been passed without giving opportunity of hearing to the petitioner. The order has been passed in absence of the petitioner, which is illegal. As such, the order dated 14.09.2011 is fit to be quashed. Learned counsel in support of his submissions has relied upon the judgment of the Hon'ble Apex Court in the case of ***Bhagwant Singh Vs. Police Commissioner***, reported in ***A.I.R 1985 S.C. 1285***.

From perusal of the materials available on record and looking into the facts of the case at this stage, it appears that the arguments advanced by the learned counsel for the petitioner has force. Vide order dated 11.11.2013 a report was called for from the Court below as to whether Manoj Singh s/o Khiru Singh, who was shown to be witness on the notice, is a resident of Village- Aliganj, P.S. Chandradeep District- Jamui or not. Report dated 02.05.2014 is on the record which shows that he is not resident of the aforesaid village. As such, there is no valid service of notice. In light of the judgment of the Apex Court in the case of ***Bhagwant Singh Vs.***



Police Commissioner, reported in **AI.R 1985 S.C. 1285** notice to the informant is necessary.

In view of the above, the impugned orders are not sustainable in law and are accordingly quashed. The matter is remanded back to the Court below for passing the order afresh in accordance with law after giving opportunity of hearing to the petitioner. Since petitioner is before Court, no fresh notice is required to be served upon him.

The application accordingly stands allowed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	AFR
CAV DATE	25.04.2017
Uploading Date	19.07.2017
Transmission Date	19.07.2017

