

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46609 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SITAMARHI

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1. Braj Kishore Son Of Late Ram Dayal Rai Resident Of Village-Ukani, P.O.-Chamanpur, P.S.-Sheohar, District-Sheohar
 2. Ram Swarup Ray Son Of Nand Lal Ray Resident Of Village+P.O.-Diwari, P.S.-Sursand, District-Sitamarhi
 3. Deo Kumar Roy Son Of Shri Laxman Roy Resident Of Village-Dharampur, P.S.-Aurai, District-Muzaffarpur

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate

For the Opposite Party/s : Ms. Asha Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 30-08-2017

Heard learned counsel for the petitioner, learned counsel for the Opposite Party No. 2 and learned Additional Public Prosecutor for the State.

2. The petitioners, in the present case, are seeking quashing of the order dated 12.07.2013 passed by learned Chief Judicial Magistrate, Sitamarhi in connection with Sitamarhi P.S. Case No. 79 of 2010 by which the learned Magistrate while differing with the police report took cognizance of the offences under Sections 420, 465, 120(B) of



the Indian Penal Code.

3. Learned counsel for the petitioners submits that the petitioner no.1 had filed one writ application being CWJC No. 10846/2008 which was pending consideration before this court and during the pendency of the said writ application the Bihar School Examination Board (in short the "Board") received a copy of order dated 04.02.2008 passed in CWJC No. 18390/2008. Submission is that CWJC No. 18390/2008 was filed by one Braj Kishore Prasad but the Board dealt with that order in their file treating the same to have been passed in the case of the present petitioners and thereby it was the Board which committed a mistake in issuing the letter as contained in memo no. 1037 dated 02.06.2009 (Annexure-5 to the present application).

4. Learned counsel for the petitioners submits that the petitioners had no role to play behind issuance of Annexure-5 to the present application, though it is an admitted position that these petitioners represented to the governing body of the College and requested them to accept their joining by virtue of the letter dated 02.06.2009. Learned counsel submits that as soon as these petitioners came to know that the letter



dated 02.06.2009 has not been rightly issued, as the reference of the CWJC in the said letter was not with respect to the case of the petitioners rather that was one filed by somebody else namely, Braj Kishore Prasad, the petitioners are said to have immediately informed the Board that the letter dated 02.06.2009 is not correct. Thus, the submission of learned counsel is that the investigating agency was justified in submission of a final form saying it a case of mistake of fact and the learned Chief Judicial Magistrate erred in taking cognizance without there being any material to have *prima facie* view of the offences alleged.

5. Learned counsel for the Opposite Party No. 2 opposed the prayer for quashing of the order taking cognizance and submit that whatever be the case of the petitioners and the materials available on the record need not be appreciated by this court at this stage since the petitioners will have an option to have raise all such issue at the time of framing of charge.

6. This Court is of the considered opinion that the order taking cognizance need not be interfered with by appreciation of the materials pointed out by the petitioners



before this Court, however, the petitioners will be at liberty to raise all the above-mentioned pleas with materials whatever collected in course of investigation at the time of framing of charge.

7. This application is dismissed with the liberty as stated above.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2017
Transmission Date	31.08.2017

