

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.49381 of 2015**

Arising Out of PS.Case No. -31 Year- 2015 Thana -SIWAN MUFFASIL District- SIWAN

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1. Bhishm Prasad Singh @ Bhishm Kumar Rai Son of Anirudh Rai  
Resident of village - Goharua, Police Station - Gudhani, District - Siwan At  
Present R/o Mahadeva ( Moti School ) Police Station - Siwan ( M ) ( Mahadeva O.P. ), District - Siwan

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Sanjeev Kumar Singh S/o Late Ram Narayan Singh Resident of village  
- Nai Wasti, Mahadeva, Police Station Siwan ( M ), Mahadeva O.P., District  
- Siwan

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

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**Appearance :**

For the Petitioner/s : Mr. Ashok Kumar

For the Opposite Party/s : Mr. Gulnar Begum(App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL ORDER**

2      02-05-2017                      Heard learned counsels for the petitioners, O.P. No. 2 and the State.

The present application has been filed for quashing the order dated 24.4.2015 passed by the learned C.J.M., Siwan in Siwan (M) (Mahadeva OP) P.S. Case No. 31 of 2015 whereby the process has been directed to be issued after cognizance being taken under sections 323,379 and 504 of the Indian Penal Code.

The informant O.P. No. 2 initially filed Complaint Case No. 3523 of 2014 which, on being transferred under section 156(3) Cr.P.C., came to be registered as Siwan (M) (Mahadeva OP) P.S. Case No. 31 of 2015 on 22.1.2015 under sections



379,323 and 504/34 of the Indian Penal Code.

On conclusion of investigation, the police submitted final report (chargesheet) under sections 379,323 and 504/34 of the Indian Penal Code and consequently, processes were directed to be issued after cognizance being taken under sections 379,323 and 504/34 of the Indian Penal Code.

It is submitted by learned counsel for the petitioner that initially a complaint was filed for the initial occurrence dated 30.5.2008. More over, the petitioner side lodged a case at earlier point of time and Title Suit No. 375 of 2011 was pending between the parties. Hence, process has been directed to be issued mechanically.

It is submitted by learned counsel for the O.P. No. 2 that the case lodged by the petitioner side is subsequent in point of time. The last incident was dated 18.12.2014 for which the complaint was filed on 19.12.2014 and after finding sufficient material during investigation final report (chargesheet) was submitted and consequently the process was directed to be issued.

Considering the rival submissions of the parties, this court is of the view that at the stage of passing order under section 190(1)(b) Cr.P.C., the Magistrate has only to see that the prima facie case is made out or not. At this stage, the Magistrate has one



advantage of having police report containing the materials collected during investigation and submitted before the court through a report under section 173(2) Cr.P.C. This is not the stage where the Magistrate has to look into the defence of the accused as has been held in the case of State of Orissa Vs. Debendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

From perusal of the impugned order, it appears that the same has been passed after going through the case diary and other materials. Hence, it cannot be said that the learned Magistrate has not applied his judicial mind. More over, the impugned order has been passed on 24.4.2015 and there is nothing on record to suggest the present stage of the case.

Hence, this court is not inclined to interfere in the matter at this stage. However, this application is disposed of with



liberty to the petitioners to raise all the issues at the appropriate stage of the proceeding.

**(Dinesh Kumar Singh, J)**

Anil/-

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