

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19447 of 2014

Arising Out of PS.Case No. -187 Year- 2008 Thana -BUXAR District- BUXAR

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Shiv Sagar Upadhyay Son of Paras Nath Upadhyay Resident of village-
Bandhuchak, Police Station- Dubhar, District- Balia (U.P.) Posted as Assistant
Engineer, Rural Works Department, Work Division, District- Buxar, at Present
Estimating Officer, Flood Control Circle, Buxar

.... Petitioner

Versus

1. The State of Bihar
2. Arun Kumar Singh Son of Sri Girija Singh resident of village- Gobindpur, P.S.-
Nawanagar, District- Buxar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Om Prakash Pandey
Mr. Damodar Prasad Tiwary
For the Opposite Party/s : Mr. Atul Chandra, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-07-2017

This is an application under Section 482 Cr.P.C.
whereunder the petitioner has prayed to quash the order dated
07.04.2014 passed by learned Chief Judicial Magistrate, Buxar in
G. R. No. 1109 of 2008 arising out of Buxar P.S. Case No. 187 of
2008.

2. Heard the learned counsel for the petitioner and the
learned APP for the State.

3. The learned counsel for the petitioner submits that the
Opposite Party No. 2 lodged an F.I.R. with Police Station Buxar for



the offence under Section 420 of the Indian Penal Code. After investigation, police submitted charge-sheet and cognizance of offence was taken against the petitioner. The matter between the parties has been compromised. In this regard, the petitioner had filed Criminal Miscellaneous No. 43940 of 2013 as the matter was already compromised for quashing the order dated 06.08.2013 whereunder cognizance was taken. The said criminal miscellaneous application was disposed of and the court below was directed to pass appropriate order on the compromise petition as well as petition for permission to compound the offence under Section 420 of the Indian Penal Code, which was filed on 04.09.2008. The matter was again placed before the court below, but the prayer to compound the case was refused on 07.04.2014. The court below refused to discharge the petitioner only for the reason that the informant could not appear before the court below. The learned counsel further submits that the compromise between the parties is not in dispute. The petitioner before this Court had filed a Complaint Case No. 1153(C) of 2009 against one Gopal Ji Rai, which after trial ended in conviction. The accused was convicted for the offence under Sections 469 and 471 of the Indian Penal Code. The learned counsel further submits that the petitioner has been sought to be prosecuted on the basis of the said documents,



which has been challenged by this petitioner also. The informant of this case was not party to the case in which Gopal Ji Rai was convicted. The informant of this case had appeared before the court below at the time of hearing of the bail and had supported the factum of compromise. The copy of the bail order is Annexure 5/B of this application. So, in view of the compromise, the prosecution of this petitioner would amount to abuse of process of the Court and so, the order is fit to be quashed.

4. The learned APP for the State concedes to the submission made on behalf of the petitioner. The learned Opposite Party No. 2 did not appear in spite of repeated calls.

5. On perusal of annexures available on record, I find that the court below was directed to dispose of the case in view of the compromise entered into between the parties. The said order passed by one of the co-ordinate Bench of this Court in Criminal Miscellaneous No. 43940 of 2013 has been annexed as Annexure 1. From Annexure 5/B, it appears that the court below in order dated 07.04.2014 while granting bail to the petitioner has observed that the case has been compromised by the informant. The Opposite Party No. 2 did not appear to oppose the submissions made on behalf of the petitioner. In view of the compromise between the parties for an offence, which is compoundable with the permission



of the court, the prosecution of this petitioner would amount to abuse of process of the Court.

6. As such, this criminal miscellaneous is allowed and order dated 07.04.2014 is quashed. The court below is directed to pass fresh order on the basis of materials available on record.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.07.2017
Transmission Date	05.07.2017

