

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35038 of 2014

Arising Out of PS.Case No. -333 Year- 2007 Thana -MOHANIA District- BHABHUA (KAIMUR)

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1. Jamal Abdul Nasir @ Tunnu son of Late Azfar Hussain
 2. Khalid Akhter son of Late Azfar Hussain
 3. Rashid Akhtar son of Late Azfar Hussain
 4. Hamid Akhtar son of Late Azfar Hussain All are resident of village-
Sheikh Bahuara, P.S.- Kochas, District- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. Sajid Akhtar @ Raju son of Late Muzaffar Hussain @ Kallu Sheikh,
Resident of village- Sheikh Bahuara, P.S.- Kochas, District- Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
For the Informant : Mr. Shakil Ahmed Khan, Advocate
For the State : Mr. P.K.Chaurasia (APP)

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER**

4 09-08-2017 Heard Mr. Bindhyachal Singh learned counsel for the

petitioner, Mr. Shakil Ahmed Khan for the informant and Mr. P.K.

Chaurasia, learned Additional Public Prosecutor for the State.

The instant case has been filed for quashing of the
order of cognizance dated 9.5.2014 passed by the Chief Judicial
Magistrate, Kaimur (Bhabua) in Mohania P.S. Case No. 333/2007,
G.R. No. 1651 of 2007 whereby the learned Chief Judicial
Magistrate after committal of the case to the Court of Session,
exercised jurisdiction, issued processes to these petitioners and
passed order for enquiry.



Mr. Bindyachal Singh raised very specific question of law which was answered by the Constitution Bench in the Case of Dharam Pal & Ors. Vshe State of Haryana & Anr.: 2013 (3) PLJR 326 (SC). He submits that once the Magistrate has committed the case for sessions trial because offence is under Sections 302/120B/34 of the Indian Penal Code exclusively triable by the Court of Sessions, the Chief Judicial Magistrate/Magistrate becomes functus officio and absolutely have no jurisdiction to exercise any power muchless to issue processes to these petitioners. Referring to the facts and circumstances, he submits that the power exercised by the Judicial Magistrate is totally without jurisdiction. He submitted that these petitioners are not named in the FIR. Even at subsequent stage when the police submitted final form, the protest petition was filed on behalf of the informant, does not mention any role played by these petitioners even then the Chief Judicial Magistrate has passed the order dated 9.5.2014 and processes were issued against the petitioners.

In view of the judgment of the Constitution Bench in the case of Dharam Pal (supra), it is now well settled that once the Magistrate has passed order committing the case for sessions trial, he becomes functus officio and has absolutely no jurisdiction to pass any order in the case. If there is any material then the



Sessions Court alone has jurisdiction under Section 193 Cr.P.C. to proceed in accordance with law or if the Court finds during trial that there are materials available, the Court may exercise jurisdiction under Section 319 Cr.P.C.

Considering the submissions of Mr. Bindhyachal Singh and the judgment of the Constitution Bench in the case of Dharam Pal (supra), this Court is left with no option but to quash the order dated 9.5.2014 as the said order is totally without jurisdiction.

It goes without saying that if there are materials to proceed against the petitioners, the Sessions Court may exercise that discretion in exercise of power under Section 193 Cr.P.C. if the Court finds sufficient materials to proceed against the petitioners.

The application is, accordingly, allowed. The order dated 9.5.2014 is quashed.

(Anil Kumar Upadhyay, J)

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