

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20783 of 2014

Arising Out of PS.Case No. -24 Year- 2011 Thana -KODHA District- KATIHAR

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Jalal Ahmad Son of Amjad Ali Resident of Mohalla- Fakir Takiya, Police Station - Katihar, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Md. Sultan Son of Late Fajiruddin @ Fariduddin Resident of Village- Stab Tola, Police Station - Korha (Routara), District- Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Mishra, Advocate
Md. Nurul Hoda, Advocate

For the State : Mr. M.Dayal (APP)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 23-06-2017 Heard learned counsel for the petitioner and the State.

The petitioner has prayed for quashing of the order dated 16.4.2012 passed by the Chief Judicial Magistrate, Katihar in Korha (Routara) P.S. Case No. 24 of 2011 whereby cognizance has been taken under Sections 406, 409 and 420/34 of the Indian Penal Code and processes was against the petitioner.

Counsel for the petitioner has advanced manifold arguments to substantiate that the present case is an abuse of the process of law. He referred to the report of the Sr. Deputy Collector dated 7.2.2011, contained in Annexure-2 and the order dated 8.3.2011 passed in complaint case No. 150/2011 by the Chief Judicial Magistrate, Katihar to indicate that the complainant



while withdrawing the complaint case has admitted misunderstanding of fact, i.e. Annexure-3 and on the basis of Annexures 2 and 3, counsel for the petitioner submitted that the foundation of the instant case is mistake of fact and as such proceeding of criminal case will be abuse of the process and will cause failure of justice.

Counsel for the State has submitted that all the materials placed before this Court are subsequent to the date of filing of the FIR and the Court is not required to go to the aforesaid facts and circumstances at this stage. It would be appropriate that if a proper petition is filed before the court below for discharge of the petitioner enclosing all the relevant documents and if after hearing the parties, the court below is of the view that the present case is a mistake of fact, the court below may take corrective measure and pass appropriate order.

Having heard the parties and after considering their submissions the present petition is disposed of with liberty to the petitioner to approach court below and file appropriate petition for discharge enclosing all the documents and advance all submission as would be available to the petitioner to demonstrate that the present case is mistake of fact or otherwise not sustainable in law.

It goes without saying that if such petition is filed



before the Court below within a period of one month from today, the court below will consider all the issues raised in the petition for discharge and consider the report of the Sr. Deputy Collector dated 7.2.2012 as contained in Annexure- 2 and the order dated 8.3.2011 whereby the Chief Judicial Magistrate, Katihar allowed the complainant to withdraw the Complaint Case No. 150/2011 and all other submissions as may be advanced on behalf of the petitioner and dispose of the same by a reasoned and speaking order preferably within a period of four months from the date of filing of such petition.

The application is disposed of with the aforesaid liberty.

(Anil Kumar Upadhyay, J)

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