

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.27873 of 2013**

Arising Out of PS.Case No. -87 Year- 2002 Thana -PHULWARIA District- BEGUSARAI

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Mukund Kumar @ Umeshwar Nath Srivastava, S/o Shri Jagjivan Nath, Resident of  
Village Shokhara, P.O.-Barauni, P.S.-Phulwariya, Pargana Malki, District-  
Begusarai.

.... .... Petitioner

Versus

The State of Bihar

.... .... Opposite Party

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**Appearance :**

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

For the State : Mr. Jharkhandi Upadhaya, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 04-04-2017**

Heard Mr. Shaishav Kumar, learned counsel for the  
petitioner and Mr. Jharkhandi Upadhaya, learned Additional Public  
Prosecutor for the State.

2. This application under Section 482 of the Code of  
Criminal Procedure has been filed for quashing of the order dated  
27.05.2013 passed by the learned Judicial Magistrate 1<sup>st</sup> class,  
Begusarai in Fulwaria P.S. Case No.87 of 2002 whereby the petition  
dated 16.02.2012 filed under Section 239 of the Code of Criminal  
Procedure (for short 'CrPC') seeking discharge from the case has  
been rejected.

3. The First Information Report (for short 'FIR') was  
registered on the basis of written report submitted by one Anwarul



Haque, Incharge Block Agriculture Officer, Begusarai submitted to the Office-in-charge, Fulwaria Police Station, Shaukhara, Barauni on 20.11.2002, alleging therein that on the information given by the Mukhiya Mantoo Choudhary, the informant along with Block Development Officer, Sri Pankaj Kumar and others raided and inspected the premises of Vishnu Mom (wax) factory on 19.11.2002 and found that illegal fertilizer was being manufactured there. Since it was getting dark, he sealed the factory and the five labourers, who were found filling illegal fertilizer in bags namely, Islam, Ramdayal Yadav, Asarfi Sah, Meghan Sah and Bisekh Kumar Das were apprehended. It is further stated that on 20.11.2002 at around 10:30 a.m., he visited the factory again and prepared the seizure list. It transpired that the said illegal activity was being carried out by one Suresh Bhagat, who had taken the premises of the factory on rent from Mukhund Kumar @ Umeshwar Nath Srivastava. An apprehension was raised that the petitioner may also be involved in the alleged illegal activity.

4. After completion of investigation, the police submitted their report under Section 173(2) of the CrPC pursuant to which cognizance of the offence was taken and the petitioner along with other accused persons were summoned to face trial.

5. At the stage of framing of charge, an application



was filed by the petitioner under Section 239 of the CrPC seeking discharge from the case on the ground that the materials collected during investigation were not sufficient to frame charges against him. The said application of the petitioner has been dismissed by the learned Magistrate vide order dated 27.05.2013, which is under challenge in the present application under Section 482 of the CrPC.

6. It is submitted by the learned counsel for the petitioner that in course of investigation apart from the labourers, who were arrested by the raiding party at the time of occurrence, all the witnesses whose statements were recorded under Section 161(3) of the CrPC stated that the manufacturing of the fertilizer was being carried out by co-accused Suresh Bhagat. They all stated that the petitioner had rented out the premises in question to Suresh Bhagat and he used to reside at a different place in Barauni. He submitted that even the Supervising Officer, who had supervised the case, had found no material against the petitioner, but the investigating officer of the case mechanically submitted charge-sheet against him.

7. In view of the submissions made by the learned counsel for the petitioner, the case diary was called for.

8. Mr. Jharkhandi Upadhaya, learned Additional Public Prosecutor appearing for the State after going through the case diary concedes that apart from the fact that the premises belonged to



the petitioner, there is no other material to connect him with the alleged offence. He submitted that the petitioner has been sent up for trial as the investigating officer found him vicariously liable for the offence committed by Suresh Bhagat as Suresh Bhagat was his tenant.

9. I have heard learned counsel for the parties and perused the record.

10. In order to satisfy myself, I have also gone through the materials collected during investigation as recorded in the case diary. I find substance in the submissions made by the learned counsel for the petitioner. The informant has simply raised a suspicion against the petitioner in his written report as the petitioner was the owner of the premises in which the illegal manufacturing of fertilizer was being carried out by co-accused Suresh Bhagat. The arrested labourers in their statement recorded by the investigating officer of the case in the beginning stated that the factory was being run by Suresh Bhagat. The documentary evidence collected in the form of bill, challan etc. also corroborates the fact that the entire illegal trade was being carried out by Suresh Bhagat. The witnesses examined in paragraph nos. 45, 46 and several other paragraphs of the case diary have clearly stated that the petitioner is a gentleman having no concern with the illegal activity of co-accused Suresh



Bhagat.

11. In view of the materials collected during investigation, in the opinion of this Court, there was absolutely no material before the investigating officer to have charge-sheeted the petitioner in the police case. Apparently, the learned Magistrate mechanically took cognizance of the offence against the petitioner and summoned him to face trial. Further, even the application filed under Section 239 of the CrPC has been mechanically dealt with.

12. Regrettably, the learned Magistrate forgot the very object of providing such an opportunity as is envisaged in Section 239 of the CrPC. It is provided to enable the court to decide whether it is necessary to proceed to conduct trial. If there is complete lack of evidence to proceed against an accused, no useful purpose would be served by putting him on trial. Rather by discharging such an accused at that stage, the court would be able to save much human efforts and cost.

13. On the facts and in the circumstances of the case, I am of the opinion that the solemn process of the court cannot be allowed to be abused by putting a person on trial against whom there is no material to proceed.

14. Accordingly, the order dated 27.05.2013 passed by the learned Judicial Magistrate 1<sup>st</sup> class, Begusarai in Fulwaria



P.S. Case No.87 of 2002 is set aside. As a consequence of the same, so far as the petitioner is concerned, he is discharged from prosecution in connection with Fulwaria P.S. Case No. 87 of 2002.

15. The application stands allowed.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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