

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54169 of 2013

Arising Out of PS.Case No. -27 Year- 1997 Thana -CHAURADANO District-
EASTCHAMPARAN(MOTIHARI)

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Jayshankar Prasad S/O Late Bharat Prasad Resident Of Village Juaffar, P.S-
Chhauradano, District- East Champaran.

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Srivastava, Adv

For the Opposite Party/s : Mr. Dr. Rabindra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 16-05-2017

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 22/23.03.2013, passed by the IVth Additional District & Sessions Judge, East Champaran, Motihari as well as order of cognizance dated 29.01.1999 passed by learned Sub-Divisional Judicial Magistrate, Raxaul in Chhauradano P.S. Case No. 27 of 1997. From the order of the Sub-Divisional Judicial Magistrate, Raxaul dated 29.01.1999, it appears that learned Sub-Divisional Judicial Magistrate has taken cognizance against the petitioner and other accused persons as named in the First Information Report of the offence under Sections 302, 328, 34 of the Indian Penal Code after looking into the materials available in various paragraphs of the case diary as mentioned in the order dated 29.01.1999.



The petitioner has filed the revision against the aforesaid order before the Sessions Judge which was dismissed vide order dated 23.03.2013 passed in Cr. Revision No. 61 of 1999.

Learned counsel for the petitioner has challenged both the orders mainly on the ground that police after investigation did not sent up the petitioner for trial after finding the accusation against this petitioner to be false. Learned Sub-Divisional Judicial Magistrate, after differing with the final report has taken cognizance against the petitioner and other accused persons for the offence under Sections 302, 328/34 of the Indian Penal Code. The petitioner has challenged the aforesaid order before the Sessions Judge by filing Cr. Revision No. 61 of 1999. The revision application was dismissed and the revisional Court held that order of cognizance was perfectly justified.

It is settled principle of law that only prima facie case is required to be seen at the time of taking cognizance on the basis of allegations made in the written report and materials available in the case diary. Learned Sub-Divisional Judicial Magistrate has found prima facie case for taking cognizance against the accused persons. The learned Additional District & Sessions Judge has found no illegality in the aforesaid order.

In such circumstance, this Court does not find any



merit in the present quashing application. The petitioner is however given liberty to raise all the points as raised in this application at the appropriate stage of framing of charge in the Court below, which shall be disposed of by Court below in accordance with law, without being prejudiced by the order of this Court.

This quashing application is, accordingly, disposed off.

(Sanjay Priya, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22/05/2017
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