

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53939 of 2013

Arising Out of PS.Case No. -412 Year- 2008 Thana -COMPLAINT CASE District- SUPAUL

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Sunil Sharma S/O Sri Chandeshwar Sharma Resident Of Village Bhim Nagar, P.S. Birpur, District Supaul.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Vijay Kumar Mukherjee S/O Late Panchanan Mukherjee Resident Of Birpur,P.S. Birpur, District Supaul.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar

For the Opposite Party/s : Mr. Rajendra Pd. Nat (App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

2 24-04-2017 This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 18.06.2011, passed by the Judicial Magistrate, 1st Class, Birpur, Supaul in Complaint Case No. 412 of 2008, wherein summons has been issued against the petitioner after holding enquiry under Section 202 Cr.P.C.

From the impugned order, it appears that on the basis of S.A. of the complainant and the statement of one witness recorded during enquiry the learned Magistrate has found prima facie case for the offences under Sections 406 and 506 of the Indian Penal Code against the petitioner and other accused persons as mentioned in the complaint petition.



The Xerox copy of the S.A. of the complainant has been annexed as Annexure-2 wherein the complainant has supported the case and has taken the name of this petitioner. One enquiry witness Md. Ismail has also supported the case of the complainant.

It has been submitted on behalf of the petitioner that Md. Ismail was not named as a witness in the complaint petition. The persons who have been named as witness in the complaint petition were not examined during enquiry and the said Md. Ismail has been examined whose name was not mentioned in the complaint petition.

Section 202(2) Cr.P.C clearly speaks:-

“In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.”

As such it appears that there is no requirement during inquiry under Section 202 Cr.P.C, that only persons who are named in the complaint petition, as witness, can be examined and the Magistrate can not examine another person as a witness.



In such circumstance, this Court does not find any illegality in the impugned order dated 18.06.2011, passed by the Judicial Magistrate, 1st Class, Birpur, Supaul in Complaint Case No. 412 of 2008.

The petitioner may raise all such points as raised in this petition at the time of framing of charge which shall be disposed of in accordance with law.

This quashing application is, accordingly, dismissed.

(Sanjay Priya, J)

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