

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7618 of 2014

Arising Out of PS.Case No. -163 Year- 2012 Thana -SIKANDARA District- JAMUI

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Md. Mahtab @ Md. Mahtab Alam, S/O Md. Kalam, Resident of village- Markama,
P.S- Sikandra, Distt- Jamui.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Azad, son of Md. Mokid, resident of village- Markama, P.S.-Sikandra,
District- Jamui.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate. Mr. Prabhat Ranjan Singh, Advocate.
For the State	:	Mr. Ajay Kumar No. 1, A.P.P.
For the O.P. No. 2	:	Mr. S.N.P.Sinha, Sr. Advocate. Mr. J.N.Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 19-07-2017

Heard learned counsel for the petitioner, learned A.P.P.
and learned counsel for the O.P. No. 2.

2. Petitioner files this application seeking quashing of
order dated 14.12.2013 passed in Cr. Revision No. 66 of 2013 by
learned Sessions Judge, Jamui whereby he has declined to interfere
with the cognizance order dated 29.05.2013 passed by learned Chief
Judicial Magistrate, Jamui in connection with Sikandra P.S.Case No.
163 of 2012 under Sections 147, 148, 307, 324, 341, 379, 504 of the
Indian Penal Code.

3. Allegation levelled in the FIR, in brief, is that this
petitioner, along with other four accused named in the FIR, assaulted



the informant with knife and iron rod causing injury to him.

4. Learned counsel for the petitioner submits that the petitioner, on the date of alleged occurrence, was not present in the village and in support thereof he refers to a letter of the Captain, Battery Commander dated 28.01.2013, which shows that he had taken last leave with effect from 13.07.2012 to 13.08.2012 and police has also not sent up three accused persons to face trial including the petitioner, but submitted charge sheet against other accused persons, however, differing with the police report, the learned Magistrate took cognizance of the offence against the petitioner and others too not sent up by police for trial.

4. Learned counsel appearing on behalf of the O.P. No. 2 submits that the petitioner overstayed after expiry of leave on 13.08.2012 and actively participated in the offence. The date of occurrence is 18.08.2012 and the police, during investigation, has not verified his plea of *alibi* and there is evidence collected during investigation against the petitioner and two other accused Md. Qayum and Ayub, who were also not sent up for trial. They had filed quashing application before this Court but the same was dismissed by order dated 10.07.2014 passed in Cr. Misc. No. 26304 of 2014.

5. It is settled principle of law that Magistrate takes cognizance of offence considering the evidence collected during



investigation and may differ with the final report submitted by the police after conclusion of investigation and police, during investigation, has not verified the genuineness of plea of alibi of the petitioner. Having considered rival submission and on perusal of record, I do not find any error in the cognizance order. So for the aforesaid reasons, this petition stands dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
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