

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21320 of 2014

Arising Out of PS. Case No.-310 Year-2013 Thana- BRAHMPUR District- Buxar

=====

Sahil Mahto @ Sahul Mahto Son of Chotak Mahto Resident of Village-
Sowan, Police Station- Brahampur, (Krishna Brahm), District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chotelal Pasi Son of Late Kagu Pasi resident of Village Sowan, Police
Station- Krishna Brham, District- Buxar.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Roy, Adv
For the O.P. No. 2	:	Mr. Sharwan Kumar, Adv
For the State	:	Mr. SADANAND PASWAN (SPL.PP.)

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-09-2017

Heard learned counsel for the parties.

This application has been filed for quashing the order taking cognizance dated 28.02.2014, passed by the learned Chief Judicial Magistrate, Buxar in Brahmpur(K.B.) P.S. Case No. 310 of 2013(G.R. No. 2738 of 2013).

Briefly stated, the facts of the case is that informant- Chhotelal Pasi gave his fardbeyan on 18.11.2013, stating that in the night at about 7:30 pm his daughter was going for natural call in the field situated just behind his house, and when she was returning all of a sudden the informant's co-villagers namely Manji Mahto, Sohan Mahto and Sahil Mahto came, and tried to outrage the modesty of his daughter. Upon the alarm



raised by his daughter, he reached there and thereafter all the accused persons fled away.

Learned counsel for the petitioner submits that on account of previous enmity, petitioner has been falsely implicated in this case. Police had investigated the matter and had not found the case to be true against the petitioner.

The investigating officer had submitted chargesheet No. 134 of 2013 under Sections 341, 357/34 of the Indian Penal Code on 31.12.2013, under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 12 of the POCSO Act, 2012, against two accused persons namely, Manjhi Mahto and Sohan Mahto. Petitioner-Sahil Mahto has not been sent up for trial.

However, from perusal of the case record including the case diary, the court below has found *prima facie* case made out against the petitioner under Sections 341, 357/34 of the Indian Penal Code, Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, and Section 12 of the POCSO Act, 2012. The court below has found sufficient materials for initiating the proceeding against the petitioner and by order dated 28.02.2014 took cognizance against the petitioner and two other co-accused persons.



The court below is not bound by the opinion of the investigating officer, even when the name of the accused in the FIR has not been chargesheeted by the police, and has not been sent up for trial, the court is empowered on the basis of the materials available on record before it and the statement of witnesses made in the case diary, to take cognizance against the accused person, who has not been chargesheeted by the police. The trial court has found sufficient materials in the case diary to proceed against the petitioner and thereafter had taken cognizance of the offence and issued summons for his appearance.

At the stage of taking cognizance duty of court is only to see if any offence is made out or not. Any defence to be taken by the petitioner is to be raised only at subsequent stage and cannot be considered at the initial stage of prosecution. When the Magistrate has taken cognizance of an offence, the power of High Court to interfere is only to a limited extent. The High Court cannot substitute its view for summoning order passed by the trial court. While exercising inherent jurisdiction under Section 482 of the Cr.P.C, High Court cannot appreciate the evidence and its truthfulness or sufficiency as it is the function of the trial court, as such the present order taking



cognizance against the petitioner cannot be interferred with at this stage, however, liberty is granted to the petitioner to raise all the issues raised before this Court as well as other issues, as may be permissible in law at the time of framing of charge, if not already framed.

With such observation and liberty, this application is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.10.17
Transmission Date	03.10.17

