

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29643 of 2016

Arising Out of PS.Case No. -2638 Year- 2014 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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MD.NIYAZ ANWAR @ NIYAZ ANWAR

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Ataul Haque

For the Opposite Party/s : Mr. Sri Ajit Kumar

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 20-04-2017

Heard.

The present application has been filed for quashing of the order dated 18.02.2015 passed by learned Judicial Magistrate, 2nd Class, Katihar, in connection with Complaint Case No.2638/2014, whereby the process has been directed to be issued after cognizance being taken for the offences punishable under sections 147, 323, 447 and 34 of the Indian Penal Code.

It is submitted by learned counsel for the petitioner that in the background of dispute with regard to gift deed, the accusation has been levelled. The petitioner is the cousin of the complainant and was not present on the place of occurrence as being a Railway employee he was present on duty. The accusation has been levelled in the background of land dispute and pending Title Suit. Moreover, the order of cognizance was passed without



sanction.

A supplementary affidavit has been filed to the effect that the matter has not travelled beyond the cognizance level.

In view of this Court, at the stage of exercising jurisdiction under section 190(1) (a) of the Code of Criminal Procedure, the Court has only to see that the accusation constitutes prima facie case or not. In this connection a useful reference may have to the case of **Sonu Gupta Vs. Deepak Gupta & Ors.** reported in **2015(2) PLJR (S.C.) 321** , relevant portion whereof reads as follows:-

"7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the



defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

In view of the above settled legal proposition, this Court is not inclined to interfere. Moreover, the impugned order is dated 27.01.2011 and there is nothing on record to suggest the present stage of the case. So far as the question of taking cognizance without sanction against the petitioner being a public servant is concerned, section 197 of the Code of Criminal Procedure precludes any Court to take cognizance of any offence alleged to have been committed while acting or purporting trial in discharge of official duty by a Judge or a Magistrate or a public servant but in the present case the offences alleged cannot be committed purported discharge of official duty.

Hence, the application is disposed of with liberty to raise all the contention at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

Ashwini/-

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