

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50095 of 2015

Arising Out of PS.Case No. -39 Year- 2008 Thana -BARHARA District- PURNIA

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Sujit Kumar Bhagat @ Sujit Kumar Son of Raj Kishore Bhagat, Resident of
Village Bagha, Police Station K. Hat, District- Purnea.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Sinha

For the Opposite Party/s : Mr. J.Upadhyay(App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

02/ 02-05-2017

Heard learned counsel for the petitioner and

Mr. J.N. Thakur, learned counsel for the State.

The present application has been filed for quashing the order dated 22.02.2013 passed by learned Chief Judicial Magistrate, Purnea in Barhara P.S. Case No. 39 of 2008, whereby process has been directed to be issued after cognizance being taken for the offences punishable under Section 396 of the Indian Penal Code.

The prosecution case is that the informant Bhushan Prasad being Dafadar on recovery of a dead body got his fard-beyan recorded on 18.03.2008 at 6.00 P.M. to SHO, Barhara Police Station leading to registration of Barhara P.S. Case No. 39 of 2008 on 18.03.2008 under Sections 302 and 201/34 of the



Indian Penal Code against unknown. Subsequently, converted under Section 396 of the Indian Penal Code.

On conclusion of the investigation final report (charge-sheet) was submitted against the petitioner, Sajjad Mian, Santosh Sah and Shankar Singh @ Shankar Garhi @ Shankar Rajak showing them absconder.

Learned counsel for the petitioner submits that the petitioner was not named in the FIR and the charge sheet was submitted after four years of the registration of the FIR. Thereafter learned CJM mechanically directed for issuance of process after cognizance being taken under Section 396 of the IPC.

In view of this Court at the stage of exercising jurisdiction under Section 190(1)(b) of the Code of Criminal Procedure the Magistrate has only to see, prima facie, case. At this stage the learned Magistrate has advantage to go through the materials collected during investigation and brought before the learned Magistrate through police report submitted under Section 173(2) of the Code of Criminal Procedure. The impugned order reflects that the learned Magistrate after going through the case diary found, prima facie, case for offence under Section 396 of the Indian Penal Code. Moreover, the impugned



order was passed on 22.02.2013 and there is nothing on record to suggest the present stage of the case. Hence, this Court is not inclined to interfere.

Accordingly, this application is disposed of with liberty to the petitioner to raise all the contentions at appropriate stage.

(Dinesh Kumar Singh, J)

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