

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37634 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- GAYA

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Subodh Singh @ Subodh Kumar, son of Sri Ram Kailash Singh, R/O village-Barma
(B.T. Bigha), P.O.-Barma, P.S.-Sherghati, Distt.-Gaya

.... Petitioner/s

Versus

1. The State of Bihar,
2. Dr. Ghanshyam Jha, s/o late Kapileshwar Jha, resident of village and P.O.-
Mailam, P.S.-Adhratharhi, Distt.- Madhubani, at present Assistant Director,
District Mines Office, Gaya, Distt.-Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh, Advocate

For the Opposite Party/s : Mr. Udai Pratap Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 16-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 12.03.2013 passed by the Judicial Magistrate, 1st class, Sherghati, Gaya, in Sherghati P.S. Case No.36 of 2009 by which the learned Magistrate has rejected discharge petition filed on behalf of the petitioner under Section 239 Cr. P.C.

2. Heard learned counsel for the petitioner and the State.

3. It has been submitted on behalf of the petitioner that even if entire allegation levelled against the petitioner is taken into account, no offence under Section 379 Indian Penal Code is



made out because there is special Act and rules for the offence under Bihar Mines Mineral Concession Rules, 1972, and Section 4(2) of the Code of Criminal Procedure prohibits investigation.

4. Learned APP has submitted that there is no illegality in the impugned order.

5. As per the written report filed by the Assistant Director, District Mines Office, Gaya, on the basis of report submitted by Sri Moti Lal Singh, Mines Inspector, mobile *Chimnies* were run by the persons illustrated in the list enclosed with the First Information Report in violation of the order of the Hon'ble Supreme Court.

6. The District Magistrate, Gaya, has ordered to file First Information Report against such mobile *Chimnies* and also to demolish the said *Chimnies* because the aforesaid act is in violation of Section 04 and 40 of Bihar Mines Mineral Concession Rules, 1972.

7. The petitioner filed petition on 03.11.2012 under Section 239 Cr. P. C. before the Court below for his discharge, which was rejected by the impugned order.

8. Section 239 of the Code of Criminal Procedure reads as follows:

“239. When accused shall be discharged-
If, upon considering the police report and



the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing”.

9. In the instant case, the Investigating Officer, after investigation, has submitted charge-sheet against the petitioner and other accused persons for the offence under Section(s) 379 Indian Penal Code and Section 04/40 of Bihar Mines and Minerals Act.

10. Learned Magistrate has mentioned in the impugned order that there is material in para 50 of the case diary against this petitioner.

11. Case diary has been received.

12. Learned APP has submitted that in para 50 and 51, witnesses have stated that this petitioner was also planning to run *Chimnies*, but due to filing of the present case, he has not started *Chimnies*.

13. The Hon’ble Supreme Court in the case of *State of Bihar Vs. Rajendra Agrawalla* reported in (1996) 8 SCC 164 has held that inherent power of the Court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the Court comes to the conclusion that there would be



manifest injustice or there would be abuse of the process of the Court, if such power is not exercised. At that stage, it is not open for the Court either to sift the evidence or appreciate the evidence and come to the conclusion that no *prima facie* case is made out.

14. Learned Magistrate under Section 239 Cr. P.C. will discharge the accused if he considers the charge against the accused to be groundless and shall record his reason for so doing.

15. Section 240(1) of the Code of Criminal Procedure is very clear that “If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

16. In the instant case, the learned Magistrate has mentioned that there are sufficient materials to frame charge against the accused for the offence under Section(s) 379 Indian Penal Code and Section 04/40 of Bihar Mines and Minerals Act.

17. In view of such, this Court does not find any illegality in the impugned order dated 12.03.2013 passed by the Judicial Magistrate, 1st class, Shergahti, Gaya, in Sherghati P.S. Case



No.36 of 2009, rejecting the petition filed under Section 239 Cr. P.C.
by petitioner.

18. Accordingly, the application is dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	12-04-2017
Uploading Date	22-05-2017
Transmission Date	22-05-2017

