

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40295 of 2014

Arising Out of PS.Case No. -724 Year- 2013 Thana -SARAN COMPLAINT CASE District-
SARAN

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Shiv Dutt Kumar Shiv Son of Late Shiya Saran Sharma Resident of Village-
Pokhawan, P.S. - Shakurabad, Distt. - Jahanabad.at Present Posted and
Working as Junior Engineer Building Construction Department, Chapra.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ajeet Kumar Garg Son of Tukar Tiwari Resident of Village - Harpur
Karah, P.S. - Baniyapur, Distt. - Saran at Chapra.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jay Prakash Sharma, Advocate Mr. Kumar Kaushik, Advocate
For the Opposite Party No.2	:	Mr. Janardhan Pd. Singh Sr. Adv. Mr. Arvind Kumar Singh, Adv Mr. Shailendra Kumar, Adv.
For the State	:	Mr. Umanath Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER**

5 03-11-2017 Heard learned counsel for the petitioner, State and

Mr. Janardhan Pd. Singh, Sr. counsel appearing on behalf of the

opposite party.

Petitioner has approached this court for quashing the
order taking cognizance dated 03.03.2014 in Complaint Case
No.724 of 2013.

Counsel appearing on behalf of the petitioner submits
that the Magistrate exercising judicial discretion was obliged to
apply judicial mind before passing order of taking cognizance.

In the instant case from perusal of the order, it



appears that the Magistrate has not applied judicial mind before passing order taking cognizance.

Counsel for the petitioner has made submission with regard to material available on record that the materials are not adequate to proceed against the petitioner and to take cognizance. With regard to the scope of exercising jurisdiction under section 482 of the Cr.P.C., the Apex Court has time and again reminded that while exercising power under section 482 of the Cr.P.C. and the court should not exercise discretion as a substitute of the court below.

Counsel for the petitioner has submitted that the court below has not framed the charges.

In that situation, it may be appropriate, if the petitioner is granted liberty to file petition for discharge before the court below where the petitioner may be in a position to substantiate with reference to the materials available on record that no case is made out against the petitioner.

Accordingly, the application is disposed of with liberty to the petitioner to file a detail petition incorporating all the issues which according to the petitioner are indicative of the fact that no case is made out against the petitioner to proceed any further, if such petition is filed on behalf of the petitioner within a period of one month from today, the court below is directed to



consider such petition on its own merit and pass final order on the petition for discharge within a period of three months from the date of filing of such petition. The court below is expected to address each and every issues raised in the petition filed on behalf of the petitioner by a reasoned speaking order.

With the aforesaid observation, the application stands disposed of.

Ravi/-

(Anil Kumar Upadhyay, J)

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