

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46225 of 2012

Arising Out of PS.Case No. -53 Year- 2012 Thana -null District- SITAMARHI

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Mahtab Hussain, S/O Abdul Salam, R/O Village - Awapur, P.S. Pupri, District - Sitamarhi

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Jay Prakash Sharma, Advocate

For the Opposite Party : Mr. Iftekhar Mahmood (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 23-11-2017

Heard the learned counsel for petitioner and the learned

A.P.P. for the State.

This criminal miscellaneous has been filed for quashing the order dated 05.03. 2005 passed by S.D.J.M., Pupri at Sitamarhi in Pupri P.S. Case No. 53 of 2001, whereby and whereunder cognizance of the offences under sections 182 and 211 of the Indian Penal Code was taken against the petitioner.

The petitioner has lodged police case wherein after completing investigation final form was submitted with recommendation for initiation of prosecution under Sections 182 and 211 of the Indian Penal Code against the petitioner (informant).



The learned counsel for the petitioner submits that composite order accepting the final report as against the accused person and taking cognizance against the petitioner under Sections 182 and 211 of the Indian Penal Code has been passed which is not permissible in the eye of law.

The second contention put forth by the learned counsel for the petitioner is that with respect of offence under section 182 of the Indian Penal Code the police officer who investigated the case was competent to lodge the complaint, but for maintaining a case under section 211 of the Indian Penal Code there is requirement of the Court filing the complaint but here neither the police officer who investigated the case nor the Court has filed the complaint.

The third contention put forth by the learned counsel for the petitioner is that the order taking cognizance dated 05.03.2005 is time barred under Section 468(2) (C) of Cr.P.C. wherein limitation prescribed is three years for taking cognizance under Section 211 of the Indian Penal Code, but here the cognizance has been taken after three years as the prosecution report is dated 31.01.2002 vide Annexure-1, and impugned order is dated 05.03.2005 i.e. after there years.

The learned A.P.P. is not in a position to controvert the aforesaid submissions.



Under the circumstances, the impugned order being illegal on the ground that it is time barred and further the impugned order has not been passed on the complaint petition filed by the police officer who investigated the case and by the court and, as such, the impugned order dated 05.03. 2005 passed by S.D.J.M., Pupri at Sitamarhi in Pupri P.S. Case No. 53 of 2001 stands quashed.

In the result, this criminal miscellaneous is hereby allowed.

(Jitendra Mohan Sharma, J.)

Rajiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

