

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42362 of 2017

Arising Out of PS.Case No. -120 Year- 2010 Thana -SURSAND District- SITAMARHI

- =====
1. Shivaji Choudhary
 2. Ganesh Sah &
 3. Kishori Sah

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar
Mr. Birendra Kumar
Maruti Kumari
For the State : Mr. Raj Ballabh Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-12-2017

Heard learned counsel for the petitioners and the State.

This petition has been filed for quashing the order dated 01-04-2017 passed by learned Sub Divisional Judicial Magistrate, Pupri, Sitamarhi in Sursand P.S. Case No. 120 of 2010 by which, learned Magistrate has taken cognizance against the accused persons for the offence under Sections-408, 411/34 of the Indian Penal Code.

Counsel for the petitioners has submitted that they are not named in the written report. There is no material against the petitioners in the entire case diary. The Magistrate in mechanical manner took cognizance against the petitioners along with other accused persons on the basis of charge sheet.

The case diary has been received.

Learned APP after looking into the case diary has submitted



that originally, these petitioners were witnesses during investigation in paras-9, 10 & 11 of the case diary but subsequently, police has submitted charge sheet against these petitioners.

In the written report, there is allegation that one Indal Mandal informed the informant on mobile that five bags of rice of mid-day meal are being taken for black market. The informant reached the school and enquired from senior teacher Chandra Bhushan Kumar who disclosed that these bags of rice are kept to be sold to Ram Bhagat Panjiyar. The informant reached the house of Ram Bhagat Panjiyar and found five bags of rice of mid day meal.

Counsel for the petitioners has submitted that police after investigation, submitted charge sheet against these petitioners also because they were teachers of the aforesaid school. Counsel for petitioners has further submitted that on the date of occurrence, petitioners were deputed by Headmaster in different work and they were not even present in the school. In support of such, the informant has annexed Annexure-2 series.

Learned APP after looking into the entire case diary very fairly submitted that no specific allegation of overt act has been alleged against these petitioners.

In such circumstances, the impugned order dated 01-04-2017 passed by learned Magistrate by which cognizance has been taken against these petitioners is not in accordance with law.

Accordingly, the impugned order dated 01-04-2017 passed by learned Sub Divisional Judicial Magistrate, Pupri, Sitamarhi in Sursand P.S.



Case No. 120 of 2010 along with entire criminal proceeding against these petitioners is hereby quashed.

This Cr. Misc. Application is accordingly allowed at the stage of admission itself.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13-12-2017
Transmission Date	13-12-2017

