

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34099 of 2014

Arising Out of PS.Case No. -58 Year- 2014 Thana -KISHUNPUR District- SUPAUL

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Devendra Kumar @ Devendra Yadav Son of Late Sitaram Yadav, Resident of Village - Kumarganj, Police Station - Kishanpur, District – Supaul.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Pradeep Kumar Gupta Son of Satya Narain Gupta, resident of village - Sonaili, Police Station - Kadwa, District - Katihar, at present posted as Block Development Officer, Kishanpur, Camp, Ratanpura, P.S. - Kishanpur, District – Supaul.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vivekanand Singh, Adv.

For the Opposite Party/s : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-08-2017

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 02.07.2014 passed by the learned Chief Judicial Magistrate, Supaul in Kishanpur Police Station Case No. 58 of 2014 whereby and whereunder the learned Chief Judicial Magistrate, finding *prima facie* case for the offences under sections 406, 409 and 379 of the Indian Penal Code, took cognizance and ordered for issuance of summons against the petitioner and other co-accused.

3. The fact of this case, in brief, is that one Praveen



Kumar Gupta, Block Development Officer, Kishanpur along with Sub-Divisional Officer, Supaul, Deputy Superintendent of Police, Supaul and Officer Incharge of Kishanpur Police Station, came to Middle School, Ratanpura and saw that from the campus of aforesaid school to the house of co-accused Rajesh Kumar Choudhary, the rice of Mid-day-Meal was fallen. On enquiry from the villages, he learnt that co-accused Rajesh Kumar Choudhary kept the aforesaid rice in his house and his wife Ram Dulari Devi was working as Cook in the aforesaid Middle School, Ratanpura. The house of co-accused Rajesh Kumar Choudhary was searched and in course of search, 75Kg. rice was seized. The co-accused Rajesh Kumar Choudhary disclosed that the aforesaid rice was given to him by the accused Devendra Kumar @ Devendra Yadav (petitioner), the teacher of Primary School of Kamaljari Puranwas. He further stated that the said rice was related with Mid-day-Meal of Primary School, Kamaljari Puranwas. The said accused and this petitioner were apprehended and seizure list was prepared with respect to the seized rice. The above case was accordingly registered against both of them.

4. The learned counsel for the petitioner submits that the petitioner is a Panchayat Teacher posted at Primary School, Kamaljari Puranwas. The apprehended co-accused Rajesh Kumar Choudhary has disclosed the name of this petitioner which has got no evidentiary



value in the eyes of law. The seized rice was recovered from the house of co-accused Rajesh Kumar Choudhary with whom this petitioner has no concern. The seizure list neither bears the signature of this petitioner nor copy thereof was handed over to him. There is no legal evidence to connect this petitioner with the alleged rice relating to the Mid-day-Meal. At the time of investigation, the case was found true only against co-accused Rajesh Kumar Choudhary. The Supervising Officer has also recommended for exoneration of this petitioner from the aforesaid offence, but the learned Magistrate without appreciating the material on record and applying judicial mind, took cognizance against this petitioner also which is not sustainable and is fit to be quashed.

5. The learned Additional Public Prosecutor on the other hand opposed the submission.

6. On perusal of the FIR and impugned order, I find that this petitioner is named in the FIR and allegation is that he in collusion with co-accused Rajesh Kumar Choudhary and his wife Ram Dulari Devi were indulged in selling the rice of Mid-day-Meal. In course of investigation, several persons have supported the allegation. The learned Magistrate has referred paragraphs 6, 7, 10, 11, 13, 14, 15, 23, 24 of the case diary wherein the villagers have stated that this petitioner and co-accused used to sell the rice of Mid-



day-Meal. They have further stated that the villages out of fear of this petitioner, were not ready to speak against him. The Court below while passing cognizance order, has observed that the Investigating Agency tried to misdirect the investigation to save the petitioner. The Court below finding *prima facie* case, has rightly taken cognizance against the petitioner. The defence of the petitioner cannot be taken into consideration at this stage.

7. In view of above discussion, I find that this criminal application is devoid of merit and the same is accordingly, dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.08.2017
Transmission Date	30.08.2017

