

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51036 of 2014

**Arising Out of PS.Case No. -276 Year- 2014
Thana -BIHPUR District- BHAGALPUR**

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Ashok Kumar Mishra @ Ashok Mishra son of Rama Nand Mishra @ Ram Mishra,
Resident of Village- Auliabad, Police Station Bihpur (Jhandapur), District-
Bhagalpur Petitioner

Versus

1. The State of Bihar
2. Rakesh Kumar @ Pintu Rai son of Umesh Chand Rai, Resident of Village-
Auliabad, Police Station Bihpur (Jhandapur), District- Bhagalpur
..... Opposite Parties

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Appearance :

For the Petitioner : Mr. Sunil Kumar Singh, Advocate
For the State : Mr. Bharat Lal, APP

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 15-11-2017

Counsel for the petitioner and the State are present.

The petitioner prays to quash order dated 12.11.2014, by which the court below has taken cognizance for offence under section 406 IPC, against the petitioner in Bihpur (Jhandapur) Police Station Case No. 276 of 2014, dated 21.8.2014.

Counsel for the petitioner submits that the instant FIR has been lodged against him as the counter blast to the lodging of Bihpur (Jhandapur) Police Station Case No. 154 of 2014 dated 20.5.2014 u/s 147, 148, 149, 341, 323, 447, 379, 387, 504, 506 IPC by the petitioner against two brothers and 5/6 unknown persons, opposite party no.2 is one of those two brothers. He submits that there is no document to show that the amount of Rs. 3 lacs, which formed the genesis of the case, was actually taken by the petitioner (accused). Besides this, prior to the lodging of the FIR in question, one another case bearing Complaint case no. 423/2014 has also been lodged by the same informant against the petitioner and three others. A copy of



the complaint is contained in Annexure 3. Counsel for the petitioner drew the attention of the Court to the order dated 11.8.2014, whereby Complaint case no. 423/2014 was dismissed for non-appearance of the complainant.

Having heard the parties and on going through the materials available on the record, I find that there is a case and counter case between the parties. However, in the case in hand, FIR had been lodged against three persons including the petitioner, and after investigation charge sheet was filed only against the petitioner. Thereafter, on perusing the material on record, the court of the Additional Chief Judicial Magistrate, took cognizance of the offence under section 406 of the IPC vide order dated 12.1.2014. I find that the order taking cognizance does not suffer from infirmity, as such, the quashing petition is dismissed.

(Madhuresh Prasad, J)

Shashi.

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