

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.31374 of 2013**

Arising Out of PS.Case No. -98 Year- 2008 Thana -NAUBATPUR District- PATNA

- =====
1. Umesh Singh @ Umesh Prasad Sharma, son of late Dipan Singh, resident of village- Shahar Rampur, P.S. Naubatpur District, Patna, presently resides at Gola Road P.S. Danapur District Patna

.... .... Petitioner/s

Versus

1. The State of Bihar,  
2. Geeta Devi, wife of Baidyanath Singh, resident of village- Shahar Rampur, P.S. Naubatpur District, Patna.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Dhananjay Kumar Singh, Advocate  
For the Opposite Party/s : Mr. Santosh Kumar Singh, Advocate  
Mr. APP

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 27-01-2017**

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 12.04.2013 passed in Naubatpur P.S. Case No.98 of 2008, by which the learned Additional Chief Judicial Magistrate, Danapur, Patna, has taken cognizance against the petitioner under Section(s) 147, 148, 149, 342, 324, 307, 302 Indian Penal Code and Section 27 of the Arms.

It has been submitted on behalf of the petitioner that trial of some other accused persons are proceeding vide Sessions Trial No.230 of 2010. In that trial, witnesses examined as PW 3, 5, 6,



and 7 have stated nothing about this petitioner.

Learned APP has stated that there is no illegality in the impugned order.

From perusal of the impugned order, this Court finds that the Court below has mentioned that in para 2, 4, 5, 37 and 38 of the Case Diary there are sufficient materials to take cognizance against the petitioners and other accused person. The police earlier did not sent up the accused-petitioner but the learned Magistrate after looking into the materials in the Case Diary, as stated in the impugned order, took cognizance against this petitioner also for the offence under Section(s) 147, 148, 149, 342, 324, 307, 302 Indian Penal Code and Section 27 of the Arms Act.

This Court is of the view that the material, which has come during trial, with respect to other accused persons in the evidence of some witnesses, namely, PW 3, 5, 6 and 7 will not vitiate the order of cognizance by which the learned Magistrate has found *prima facie* case under Section(s) 147, 148, 149, 342, 324, 307, 302 Indian Penal Code and Section 27 of the Arms Act. From Xerox copy of certified copy of the deposition annexed as Annexure-9 series, it appears that these witnesses have been examined in 2011.

In such circumstances, this Court is not inclined to interfere with the order of cognizance passed by the learned



Magistrate.

The application is, accordingly, dismissed.

However, the petitioner is at liberty to raise all these points, as raised in this quashing application, at the time of framing of charge, which shall be considered and disposed off without being prejudiced by this order.

(Sanjay Priya, J)

*J.Alam/-*

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