

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51381 of 2013

Arising Out of PS.Case No. -48 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District-
MUNGER

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1. Prakash Kumar Son Of Sri Ram Chandra Chaudhary R/O Mohalla-
Hazratganj (Khanquah), P.S.- Kasim Bazar, District- Munger

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binay Kumar

For the Opposite Party/s : Mr. Akber Ali(App)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

2 11-01-2017

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 15.06.2013, passed by Sessions Judge, Munger in Cr. Revision No. 205 of 2011 confirming the order dated 03.06.2011 passed in Case No. 48C3 of 2011 passed by the Chief Judicial Magistrate, Munger whereby cognizance under section 47(A) of the Excise Act has been taken.

The contention of the learned counsel for the petitioner is that no offence against the petitioner is disclosed and the present prosecution has been instituted with mala fide intention for the purposes of harassment. Learned counsel pointed out towards certain documents and statements in support of his



contention.

Having heard learned counsel for the parties and keeping in view the facts and circumstances of the case, there appears no force in the arguments advanced by learned counsel for the petitioner.

The law regarding sufficiency of material which may justify the summoning of accused and also the Court's decision to proceed against them in a given case is well settled. The Court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a prima facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required.

The submissions made by the learned counsel for the petitioner calls for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial Court and while doing so even the submission made on point of law can also be more appropriately gone into by the trial Court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre trial before the actual trial begins.

In the case of *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi* 1976 3 SCC 736, the Hon'ble Apex Court



had held as follows :

“The magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the magistrate has exercised his discretion it is not for the High Court, or even this Court, to substituted its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved would ultimately end in conviction of the accused.”

Perusal of the complaint and also the materials available on record, make out a prima facie case against the accused at this stage. I do not find any justification to quash the order taking cognizance. The prayer for quashing the same is refused as I do not see any abuse of the court’s process.

The application is, therefore, dismissed.

(Arvind Srivastava, J)

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