

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29242 of 2016

Arising Out of PS.Case No. -98 Year- 2014 Thana -JANDAHA District- VAISHALI(HAJIPUR)

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Nityanand Rai, son of Late Ganga Vishnu Rai, R/o Village Karanpura, P.S.- Ganga Bridge (Hajipur) District- Vaishali, at present Member of Parliament (Lok Sabha) in Ujiyarpur Constituency, Bihar.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Naresh Dikshit, Adv.
Mr. Brij Bihari Tiwary, Adv.
Mrs. Kalpna, Adv.
For the Opposite Party/s : Mr. Rajendra Prasad Nat, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-12-2017

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for setting aside the order dated 03.07.2014 passed by the learned Judicial Magistrate 1st Class, Vaishali, Hajipur in Jandaha P.S.Case No. 98 of 2014 whereby and whereunder the learned Magistrate has taken cognizance of the offence punishable under Section 171-F of the Indian Penal Code and Sections 127A and 133 of the Representation of Peoples Act.

3. It is submitted by the learned counsel for the petitioner



that the offences alleged are all non-cognizable and in view of the provisions prescribed in Clause (2) of Section 155 of the Cr.P.C., institution of the FIR and investigation of the case were not permissible without the order of the Magistrate.

4. Learned counsel for the State concedes that the offences alleged in the FIR are all non-cognizable offences and the First Information Report was instituted without the permission of the Magistrate.

5. Section 155(2) of the Cr.P.C. provides as under :-

“155. Information as to non-cognizable cases and investigation of such cases

(1) xxx xxx

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.”

6. A perusal of the provision prescribed under Section 155(2) of the Cr.P.C. would clearly show that no police officer is empowered to investigate a non-cognizable case without the order of Magistrate having power to try such case or commit the case for trial.

7. Thus, the investigation of a non-cognizable offence by the police without the permission of the competent Magistrate is patently illegal. The said defect is not curable under Sections 460 and 465 of the Cr.P.C.

8. In view of the admitted facts, the impugned order dated



03.07.2014 passed by the learned Judicial Magistrate 1st Class, Vaishali taking cognizance of the offence after perusal of the police report submitted under Section 173(2) of the Cr.P.C. on competition of investigation made in connection with a case which involved non-cognizable offences only cannot be sustained.

9. Accordingly, the impugned order dated 03.07.2014 passed by the learned Judicial Magistrate 1st Class, Vaishali, Hajipur in Jandaha P.S.Case No. 98 of 2014 is set aside.

10. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

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

