

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 37912 of 2016

Arising out of P.S. Case No. - 211 Year - 2015 Thana - BARBIGHA District - SEKHPURA

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SHUBHJIT KUMAR @ CHHOTE @ SHUBHJIT, Son of Late Manoj Kumar,
Resident of Village - Khetalpura, P.S. - Sare, District - Nalanda

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Sr. Advocate
Mr. Ravi Ranjan, Advocate
Mr. Shashank Shekhar, Advocate

For the Opposite Party : Mr. Amrendra Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date: 22-02-2017

By the impugned order, dated 17.03.2016 passed in Barbigha Police Station Case No. 211 of 2015, the learned Additional Chief Judicial Magistrate-2, Sheikhpura has taken cognizance for the offences under Sections 448, 323, 504, 506, 380 and 307/34 of the Indian Penal Code against all the accused persons including the petitioner.

2. The same is under challenge, in this application under Section 482 Cr.P.C., on the ground that the impugned order suffers from non-application of judicial mind, inasmuch as the petitioner was not sent up for trial and his name appears in column no. 12 of the charge-sheet vide Annexure-2 whereas the court below has recorded in the impugned order that the name of petitioner appears in column no. 11 which is relating to the accused who were sent up for trial. Next contention is that though the Magistrate is empowered to disagree with the police report.



However, the disagreement must be substantiated by the evidence collected during investigation. The court below has not discussed this aspect of the matter, hence, the impugned order is not sustainable in law.

3. According to the First Information Report, the petitioner and other named accused persons, variously, armed, came to the house of informant Nishant Kumar and bitterly assaulted to the informant, to his father and a friend Suraj Kumar. Specific allegation against the petitioner is that he committed theft of gold chain from the neck of the informant. Allegation of assault is general and omnibus.

4. The case diary reveals that witness Nitya Nand vide para 5 of the case diary has supported the occurrence as eye-witness and has named the petitioner also amongst other accused persons with specific attribution that the petitioner had committed assault at the head of the informant. Some other witnesses supported the occurrence as hearsay witness on the basis of disclosure by witness Nitya Nand that this petitioner had caused injury to Nishant Kumar.

5. It is true that the court below has not recorded that name of the petitioner appears in the column of not sent up accused. The court below has not recorded the specific evidence in the case diary against the petitioner. However, due to the aforesaid technicalities, the impugned order cannot be faulted if the same is substantiated by material on the record as noticed above.



6. I do not find any merit in the submission of the petitioner, that at the time of occurrence, the petitioner was in the hospital to attend his ailing father who subsequently died on the same day, for interference with the impugned order. The probable defence of alibi can be looked into at the stage of trial only.

7. Therefore, I do not find any merit in this application, accordingly, it stands dismissed.

(Birendra Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

