

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46092 of 2014

Arising Out of PS.Case No. -202 Year- 2012 Thana -JAMUI District- JAMUI

- =====
1. Baleshwar Barnwal S/o Late Hiralal Barnwal
 2. Dilip Kumar @ Dilip Kumar Barnwal Son of Baleshwar Barnwal
 3. Md. Arman Khan Son of Asgar Khan Petitioner No. 1 to 2 Resident of Mohalla- Mahisouri Bazar Jamui, District- Jamui and Petitioner No.-3 is R/o Mohalla- Islamnagar, P.S. + Distt.- Jamui
 4. Birendra Yadav Son of Thakuri Yadav Resident of village- Dumarkola, P.S.- Khaira, District- Jamui

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

=====

Appearance :

For the Petitioners : Mr. Satya Prakash Parasar, Advocate

For the Opposite Party : Mr. L.K. Sharma, Additional Public Prosecutor

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 11-10-2017

Heard learned counsel for the petitioners and
learned Additional Public Prosecutor for the State.

The petitioners are aggrieved by the order dated
05.09.2014 passed in G.R. No. 1033/2012 arising out of Jamui
P.S. Case No. 202/2012, by which learned Sub-Divisional
Judicial Magistrate, Jamui has differed with the police report
and took cognizance, not only against Section 353/34 of the
Indian Penal Code under which the charge-sheet was filed



but also took cognizance under Section 7 of the Essential Commodities Act.

Learned counsel for the petitioners submits that so far as power of the learned court below to differ with the police report is concerned, there is no doubt with respect thereof, but in the present case, the cognizance at least under Section 353 I.P.C. has been wrongly taken in a routine and mechanical manner without applying a judicious mind to the facts appearing from the F.I.R. and the case diary.

Learned counsel submits that the order taking cognizance under Section 353 I.P.C. would not be sustainable for the simple reason that these petitioners are not said to be present on the place of occurrence and allegedly had fled away, then, there is no question of committing any act of assault against the police authorities, so as to attract the provisions of Section 353 I.P.C.

Learned Additional Public Prosecutor for the State submits that the learned Sub-Divisional Judicial Magistrate, Jamui has got power to differ with the police report and if he has partly differed in taking cognizance under Section 7 of the E.C. Act as well as under the charge-sheeted provision of



Section 354 I.P.C., no fault may be found with his power or jurisdiction, but having said so the learned Additional Public Prosecutor fairly submits that the contention of learned counsel for the petitioner as regards the cognizance under Section 353 I.P.C. seems to have some force.

This Court has considered the materials available on the record and has gone through the impugned order. The learned Sub-Divisional Judicial Magistrate, Jamui has discussed various paragraphs of the case diary, and upon such discussion, order of cognizance has been passed. The impugned order, however, is not stating as to how cognizance has been taken under Section 353 I.P.C. against these petitioners.

So far as cognizance under Section 7 of the E.C. Act is concerned, this Court does not find any illegality or infirmity with the order taking cognizance under Section 7 of the E.C. Act.

As the materials available on record do not indicate any reason or ground for taking cognizance under Section 353 I.P.C., the said part of the order passed by learned Sub-Divisional Judicial Magistrate, Jamui by which he



has taken cognizance under Section 353 I.P.C. is hereby quashed.

The order taking cognizance under Section 7 of the E.C. Act is not interfered with.

This application is, therefore, partly allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2017
Transmission Date	12.10.2017

