

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43707 of 2013

Arising Out of PS.Case No. -14 Year- 2007 Thana -DHAKA
District- EASTCHAMPARAN(MOTIHARI)

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Shyam Kishore Ram Son Of Chaturi Ram Resident Of Village - Sorpania, P.S. -
Dhaka (O.P. Pachpakari), Distt. - East Champaran

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tondon

For the Opposite Party/s : Mr. Mani Madhukar, APP

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V JUDGMENT

Date: 20-06-2017

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 20.05.2013, passed by Sub-Divisional Judicial Magistrate, Sikrahana at Motihari, in Dhaka P.S. Case No. 14 of 2007, whereby cognizance has been taken against the petitioners for the offences under section 452, 504 of the Indian Penal Code and sections 25(1-b) a, 26 & 35 of the Arms Act.

On the written report of the petitioner that while he was taking rest in his house accused Ramayan Ram having Khukhri and country made pistol in his hand alongwith his mother entered into his house and fired with intention to kill his son but his daughter snatched the country made pistol from the hand of the accused and



raised alarm upon which villagers came, Dhaka P.S. Case No. 14 of 2007 was lodged for the offences punishable under sections 447, 504, 307/34 of the Indian Penal Code and sections 25(1-b) A/26 Arms Act. Upon investigation, Investigating Officer found that the accused had come with knife only and the arm in question was brought by the daughter of the informant. As such, he submitted charge-sheet against the accused under sections 452/504 of the Indian Penal Code and against the daughter of the informant under sections 25(1-b) a/26/35 of the Arms Act. Magistrate took cognizance against the informant and his daughter under both sections of Indian Penal Code and the Arms Act.

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. It is further submitted that during supervision, the petitioner and her daughter were directed to be added as accused in the case. Learned Magistrate failed to consider that if at all there was any material against the petitioner, a separate first information report should have been lodged. Investigating Officer submitted charge-sheet against the accused and the informant jointly. Learned Magistrate also took cognizance against the accused and the daughter of the petitioner under both sections i.e. Indian



Penal Code and the Arms Act. As such, the order taking cognizance is fit to be quashed.

From perusal of the materials on record and looking into the facts of the case at this stage, the arguments advanced by the learned counsel for the petitioner has force. The Magistrate while taking cognizance failed to consider that if any case is made out against the petitioner, the Investigating Officer should have lodged a separate first information report against the informant and daughter of the informant. The Magistrate also took cognizance in the same manner.

In view of the above, the impugned order is not sustainable in law and is accordingly quashed. The matter is remanded back to the Court below for passing the order afresh taking into consideration the aforesaid aspects.

The application accordingly stands allowed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	AFR
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