

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53136 of 2013

Arising Out of PS.Case No. -6 Year- 2009 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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Mahendra Prasad Singh Son of Late Harihar Mahto Resident of Village -
Narsaliganj Kalyanpur, P.S. Biharsharif, District - Nalanda, at present
Mohalla - Puraniganj, P.S. Kasim Bazar, District - Munger

.... Petitioner

Versus

1. The State of Bihar
2. Town Commissioner, Biharsharif Corporation, Nalanda at Biharsharif

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. A.K.Thakur with Mr.Ravi Ranjan,
Advocates

For the Opposite Party/s : Mr. Dr.Ajeet Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 25-01-2017

Heard learned counsel for the petitioner.

The petitioner has preferred this application under Section 482 Cr.P.C. for quashing the order dated 20.1.2009 passed by the Chief Judicial Magistrate, Nalanda at Biharsharif, in Complaint Case No. 3C 6/2009 by which he has taken cognizance against the petitioner for the offences under Sections 323, 325 and 437 of the Bihar Municipal Act, 2007.

The prosecution case, in short, is that the Town Commissioner, Biharsharif Municipal Corporation lodged a written report addressed to the learned Chief Judicial Magistrate, Nalanda at Biharsharif stating therein, inter alia, that one Indradeo Prasad, son of Late Ramji Prasad, resident of Ward No.28, P.S. Bihar, District Nalanda has his house near the Narsaliganj Devi



Asthan, situated at Ward No.28 and same plot was inspected on 13.8.2008/14.8.2008 and it was found that without sanction of the plan the boundary wall was given and the building was constructed and there is encroachment over the land. It has been also stated that inspection was done in presence of Amin and Junior Engineer and, hence, offences under Sections 313, 314, 315 and 205 of the Municipal Act are made out against the petitioner. It is further stated that vide Memo No. 1316 dated 13.8.2008 a notice was served but no show cause was filed and accordingly complaint was filed.

Learned Chief Judicial Magistrate vide order dated 20.1.2009 passed in the complaint case has taken cognizance of the offences under Sections 323, 325 and 437 of the Bihar Municipal Act, 2007.

The petitioner has filed the present application for quashing of the aforesaid order dated 20.1.2009 passed by the Chief Judicial Magistrate, Nalanda at Biharsharif in Complaint Case No. 3C 6/2009.

It has been submitted on behalf of the petitioner that the petitioner has no concern with the aforesaid plot and further it is submitted that no notice was served upon him before initiating proceeding against him and, as a matter of fact, he is a resident of Munger and never any notice was served at his present address and without appreciating the aforesaid fact and complying



provisions of the Municipal Act, 2007 the proceeding has been initiated by learned Chief Judicial Magistrate and without appreciating the aforesaid fact has passed the order taking cognizance against the petitioner.

Heard learned APP also.

Learned APP has tried to show that notice was served upon the petitioner before initiating the proceeding.

Whatever be the fact of the case, at this stage it is not possible to examine whether notice was served to the petitioner before initiating proceeding or not; secondly, plot belongs to the petitioner or not, as these questions will be examined when the whole matter will be before the court. Hence, at present, I am not inclined to interfere with the impugned order taking cognizance. However, the petitioner is at liberty to raise all the points at an appropriate stage before the court below itself and the court below will dispose of the application, if filed, after hearing the parties by a speaking order.

With the aforesaid observations, this application is disposed of.

(Vinod Kumar Sinha, J)

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