

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52730 of 2013

Arising Out of PS.Case No. -116 Year- 2012 Thana -KARJA District- MUZAFFARPUR

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1. Ajay Rai @ Duryodhan Son Of Akindar Rai Resident Of Village- Raksa,
P.S.- Karja, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shagir Prasad

For the Opposite Party/s : Mr. Dr.Ajit Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 20-01-2017

Heard

Petitioner has preferred this application under Section 482 of Code of Criminal Procedure against order dated 14.12.2012 passed by S.D.J.M. (West) Muzaffarpur in G.R. no. 1329 of 2012, T.R. no. 4555/2013 arising out of Karja PS case no. 116/2012 by which he has taken cognizance against the petitioner under Sections 323, 341, 342, 379, 504/34 of Indian Penal Code.

The prosecution case in short is that informant Harendra Pd. Thakur has lodged a written report before the police stating therein that he is working as Branch Manager in North-Bihar Gramin Bank, Branch-Lalgarh, Dist-Vaishali and on 24.06.2012 while he was going by his car, on the way near the house of Sodhi jee, petitioner in a drunken condition demanded



ransom. Petitioner on his motorcycle, suddenly came in front of his car, abused him and snatched Rs. 2,000/- from his pocket. However, on *halla* people assembled and thereafter, petitioner fled away.

On the basis of written statement, Karja PS case no. 116/2012 was instituted and after investigation, police found case true only under Section 504 of Indian Penal Code and not under other sections of Indian Penal Code. However, learned Magistrate, vide order dated 14.12.2012 had taken cognizance against the petitioner in all sections mentioned in the FIR.

Petitioner has challenged the aforesaid order taking cognizance by the court below stating *interalia* that police, after investigation, submitted charge-sheet only under Section 504 of Indian Penal Code which is a non-cognizable offence and he has asserted that in the whole case diary, there is nothing against the petitioner showing allegation under Sections 323, 341, 342, 379 of Indian Penal Code and as such, investigation officer has rightly submitted charge sheet under Section 504 of Indian Penal Code, however, learned Magistrate without assigning any reason has taken cognizance under Section 323 and other sections of Indian Penal Code against the petitioner which shows that without going through the case diary, learned Magistrate passed an order



taking cognizance under Section 323 and other sections of Indian Penal Code. As such, the order taking cognizance is not sustainable in the eye of law. It is further submitted that trial of the case has not been commenced till now.

Heard learned A.P.P. also. Learned A.P.P. has opposed the prayer for bail.

Heard both sides and perused the record. From perusal of record, it appears that charge sheet is submitted only under Section 504 of Indian Penal Code and not under other sections of Indian Penal Code. However, learned Magistrate has taken cognizance under all the sections mentioned in the FIR without assigning any reason. As such, the order impugned is not sustainable in the eye of law, hence, the impugned order is quashed. Let this case be remitted back to the court below for passing a fresh order after perusal of the case diary and other materials available before him.

With these observations, this application is allowed.

(Vinod Kumar Sinha, J)

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