

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.54115 of 2013

Arising Out of PS.Case No. -26 Year- 2012 Thana -GOPALPUR District- PATNA

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1. Sudhir Bind, S/O Chanarik Bind, resident of village-Bir, P.S- Dhanrua, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Police Incharge of Gopalpur (Sampatchak), Police Station, Sri Umesh Kumar, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate

For the Opposite Party/s : Mr. Satyendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 04-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order of cognizance dated 02.01.2013 passed by the Chief Judicial Magistrate, Patna, in Gopalpur P.S. Case No.26 of 2012 by which the learned Magistrate has taken cognizance against the petitioner under Section 395 Indian Penal Code.

2. It is alleged in the First Information Report that on 19.04.2012 at about 3.00 AM, a *dacoity* was committed by unknown persons in the house of the informant.

3. Heard learned counsel for the petitioner and the State.

4. It has been submitted on behalf of the petitioner that the alleged occurrence took place on 19.04.2012 at 3.00 AM and *fard-e-bayan* was recorded at 7.00 AM, whereas, the petitioner was in jail



since 17.04.2012 in connection with Bye-pass P.S. Case No.50 of 2011 and was released from jail on 12.11.2012, which creates doubt about the involvement of the petitioner in the aforesaid case.

5. These are the defence of the accused, which are not required to be looked into by the Magistrate at the time of taking cognizance.

6. It is well settled that only *prima facie* case is to be seen by the Magistrate at the time of taking cognizance on the basis of allegation made in the written report and the materials available in the case diary after investigation.

7. Therefore, this Court does not find any illegality in the impugned order of cognizance passed by the learned Magistrate.

8. However, the point as raised by the petitioner in this quashing application may be raised in the Court below at the time of framing of charge, which shall be considered and disposed off on its own merit without being prejudiced by this order.

9. This application is, accordingly, disposed off.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
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