

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41581 of 2014

Arising Out of PS.Case No. -132 Year- 2010 Thana -SATHI District-
WESTCHAMPARAN(BETTIAH)

=====

1. Sajawal Kabari Son of Late Gudari Mian Resident of Village - Mahuawa,
P.S.- Chanpatiya, District - West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Ekram S/o Kasim R/m- Mansa Tola, P.S. Bettiah(M) Distt. West
Champaran.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Aditya Nath Jha

For the Opposite Party/s : Mr. M.Dayal (App)

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 15-01-2018 Heard the learned counsel for the petitioner, the
informant and the State.

The petitioner has challenged the order dated
03.08.2011 passed by the learned Chief Judicial Magistrate,
Bettiah, West Champaran in connection with Sathi P.S. Case No.
132/2010, whereby cognizance has been taken against him under
Section 406, 120(B) and 379/34 of the Indian Penal Code.

The informant of this case, who is the owner of a
tractor, which is said to have been stolen, has lodged the F.I.R.
alleging that the driver of his tractor, viz. Raju Baitha informed
him on telephone that his tractor has been stolen. On such
information, the informant claims to have gone to the place which



was indicated by aforesaid Raju Baitha. At that time and place, the local police had also arrived and the informant suspected the hands of his driver Raju Baitha, his maternal uncle, viz. Santu Kabari, and the petitioner for having taken away the tractor of the informant and for providing wrong information to him that it has been stolen.

After investigation, charge-sheet was submitted against Raju Baitha and his maternal uncle, viz. Santu Kabari, and the petitioner, being found innocent was not sent up. The learned Magistrate, differing with the police report has taken cognizance.

Learned counsel for the petitioner has drawn the attention of this Court to the case diary and has submitted that apart from the petitioner having been named in the F.I.R., no other material has been collected against him for being prosecuted in the aforesaid case. It has also been submitted that not even in further statement of the informant, he has stated anything to suggest the hands of the petitioner in taking away his tractor.

Perused the impugned order.

It appears that a general statement has been made by the court below that there are sufficient materials in the case diary to make out a *prima facie* case against the petitioner. There is complete absence of any material, much-less clinching material,



against the petitioner. The order taking cognizance, therefore, is absolutely unwarranted, so far as the petitioner is concerned. While saying so, the Court has also taken note of the fact that till date charges have not been framed in this case.

For the reasons aforesaid, the impugned order dated 03.08.2011 is set aside and the petition is, accordingly, allowed.

(Ashutosh Kumar, J.)

Rakhi

U		T	
---	--	---	--

