

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9464 of 2017

Arising Out of PS.Case No. -122 Year- 2016 Thana -DHAKA District-
EASTCHAMPARAN(MOTIHARI)

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Sheo Shankar Sah, son of Late Khalifa Sah, resident of village - Jamua, P.S.-
Dhaka, District - East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanoj Sah, son of Hitlal Sah,
3. Manoj Sah, son of Hitlal Sah,
4. Basudeo Sah, son of Dular Sah,
5. Gauri Sah, son of Biranchi Sah,
6. Biranchi Sah, son of Khaheru Sah,

All are resident of village - Jamua, P.S. Dhaka, District - East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Zaki Haider, Advocate

For the State : Smt. Asha Devi, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-04-2018

In the instant application filed under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') the petitioner has prayed for quashing the order dated 14.09.2016 passed by the learned Sessions Judge, East Champran, Motihari in Cr.Revision No.172 of 2016 by which he has dismissed the revision application filed by the petitioner against the order dated 25.07.2016 passed by the learned Sub Divisional Judicial Magistrate, Sikrahana, Dhaka in Dhaka P.S. Case No.122 of 2016 by which the learned Sub Divisional Judicial Magistrate, Sikrahana, Dhaka has taken cognizance of the offences



punishable under Sections 147, 149, 341, 506 and 323 of the Indian Penal Code (for short 'the IPC') and summoned the opposite party nos. 2 to 6.

2. Learned counsel for the petitioner submitted that the petitioner is informant of the case and on account of tainted investigation conducted by the police pursuant to the institution of the first information report in Dhaka P.S. Case No.122 of 2016 registered under Sections 147, 149, 341, 506, 323 and 324 of the Indian Penal Code, charge-sheet was submitted under Sections 147, 149, 341, 506 and 323 of the IPC only. The learned Sub Divisional Judicial Magistrate, Sikrahana, Dhaka vide order dated 25.07.2016 took cognizance of the offences under which charge-sheet was submitted without application of judicial mind. He submitted that there are materials in the case diary to show that the informant of the case was seriously injured and, thus, the learned Sub Divisional Judicial Magistrate, Sikrahana, Dhaka ought to have taken cognizance of the offences punishable under Sections 307, 325 and 326 of the IPC together with the other offences under which cognizance was taken. He submitted that by not taking cognizance of the aforesaid offences, the learned Magistrate had committed gross illegality. The revisional court also failed to appreciate the facts and the law involved in the case.



3. I have heard learned counsel for the petitioner and perused the record.

4. I find that the revisional court has given cogent reason for not interfering with the order passed by the learned Sub Divisional Judicial Magistrate, Sikrahana, Dhaka. The revisional court has granted liberty to the petitioner to raise his grievance before the court concerned at the time of framing of charge. There is no perversity in the order impugned. The court has ample power to add or amend charges on the basis of the evidence led before it during trial in exercise of powers conferred under Section 216 of the Cr.P.C. In case the evidences are led before the court to the effect that apart from the offences under which charges have been framed ingredients of some other offences are also attracted, it may alter or add to any charge at any time before judgment is pronounced and in such case the interest of prosecution and the accused has to be safeguarded by permitting them to further examine or cross-examine the witness already examined and also affording them an opportunity to call other witnesses. Further, under Section 323 of the Cr.P.C., a Magistrate after commencement of enquiry or a trial of an offence is vested with the power to commit the case to the Court of Session for trial if it appears to him at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Court of



Session. I also find that though the petition has been filed under Section 482 of the Cr.P.C., the same is in the nature of second revision, which is barred under Section 397(3) of the Cr.P.C.

5. In view of the discussions made above, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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