

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39952 of 2016

Arising Out of PS.Case No. -11 Year- 2010 Thana -GOVERNMENT OFFICIAL COMP. District-
EASTCHAMPARAN(MOTIHARI)

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Harishankar Prasad S/o Laxmi Sah, resident of Ramgarhawa Bazar, P.S.-
Ramgarhawa, District- East Champaran

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar No.2, Advocate

For the State : Mr. Kumar Virendra Naraya, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-01-2018

Being aggrieved by the order dated 20.06.2016 passed in
O.C. No.11 of 2010, T.R. No.693 of 2016 by the learned Sub
Divisional Judicial Magistrate, Raxaul at Motihari, the petitioner has
filed the present application under Section 482 of the Code of
Criminal Procedure (for short 'the Cr.P.C.').

2. The contention of the learned counsel for the petitioner is
that initially a complaint was filed by the learned Sub Divisional
Magistrate, Raxaul in the court of Sub Divisional Judicial Magistrate,
Raxaul at Motihari in which cognizance has been taken against the
petitioner after expiry of period of limitation. He submitted that the
complaint was filed on 03.08.2009, but the cognizance of the offence
was taken on 26.10.2010, i.e., after more than one year of filing of the



complaint. Section 468(2) of the Cr.P.C. puts a bar to taking cognizance after lapse of period of limitation. The offence prescribed under Section 188 of the Indian Penal Code (for short 'the I.P.C.') is punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both and as per Section 468(2)(b) of the Cr.P.C., the court cannot take cognizance of the offence after one year in case offence is punishable with imprisonment for a term not exceeding one year.

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

4. It would be manifest from the record that the complaint was filed on 03.08.2009 and on the same day the learned Sub Divisional Magistrate called for an investigation report from the officer incharge Ramgarhwa Police Station. That would mean that the learned Magistrate took cognizance of the offence and decided to proceed with it on 03.08.2009 finding a prima facie case to be made out. Subsequently, after receiving the report of the officer incharge of the Ramgarhwa Police Station, the learned Sub Divisional Magistrate, Raxaul summoned the petitioner to face trial for the offence punishable under Section 188 of the I.P.C. vide order dated 26.10.2010. The order dated 26.10.2010 is not an order taking cognizance of the offence rather the same is an order passed under



Section 204 of the Cr.P.C. after holding enquiry under Section 202 of the Cr.P.C. The bar under Section 468 of the Cr.P.C. is only to taking cognizance of the offence and not to summoning an accused. As cognizance of the offence was taken on the date of filing of the complaint itself, no fault can be found with the impugned order dated 20.06.2016.

5. In that view of the matter, I see no merit in this application. The application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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