

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47703 of 2014

Arising Out of PS.Case No. -48 Year- 2005 Thana -SHRIKRISHNAPURI District- PATNA

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Vikram Kumar, son of Shree Ravindra Prasad, resident of Muhallah Road No.- 07,
Patel Nagar, Police Station- Shastrinagar, District- Patna, presently residing at Road
No.-05, North Patel Nagar, P.S.- Patliputra, District- Patna

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kali Prasanna Dubey, Advocate

For the Opposite Party/s: Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 12-09-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing of First Information Report of Sri Krishnapuri P.S. Case No.48 of 2005 along with Charge-sheet No.334 of 2006 submitted against the Petitioner for the offence under Section(s) 420, 406, 409 and 120-B Indian Penal Code.

2. During pendency of this application, one Interlocutory Application being I.A. No.1042 of 2018 has been filed for quashing the entire criminal proceeding including the order of cognizance dated 27.11.2017 passed by the Special Judge, CBI-cum-ACJM, Patna, in Sri Krishnapuri P.S. Case No.48 of 2015.



3. Heard learned counsel for the Petitioner and learned APP for the State.

4. The prosecution case, as per written report filed by Prem Prakash, Special Executive Magistrate, District Control Room, Patna, addressed to Officer-in-Charge of Sri Krishnapuri P.S. on 19.03.2005, is that a secret information had been received at District Control Room, Patna, that in connivance with administrative personnel of A N College, Patna, question papers of Intermediate Examination were passed on through some middleman outside the premises of A N College before start of the examination. Whereafter, answer-sheets of the said questions were prepared and the same were sold to examinees for the price of Rs.300/- to 400/-.

5. It is further alleged in the written report that on such secret information, a team was constituted for necessary action. The team made raid on the verandah of first floor of Krishna Apartment where some persons were found preparing answers of the question at the verandah of Magadh Tutorial. Those persons were arrested and several articles were seized from their possession as mentioned in the written report. All the articles were seized and seizure list was prepared, which is part of the First Information Report.



6. It is also alleged in the written report that arrested persons disclosed that one PA to Principal of A N College, Patna, used to handover the question paper just before start of the examination. On that day, they got the question paper at 10.00 AM and when questions were being solved, they were arrested during the raid made by the police. They also disclosed that on previous date also questions were brought out and unfair means were adopted by the examinees. It is also alleged by the Informant that disclosure revealed that there was connivance of college administration in the entire episode.

7. This petition has been filed for quashing of First Information Report of Sri Krishnapuri P.S. Case No.48 of 2005, but during pendency of this case cognizance has also been taken by the Court below by order dated 27.11.2017 on the basis of charge-sheet submitted by the police against the petitioner and several other accused persons for the offence under Section(s) 406, 409, 420 and 120-B Indian Penal Code.

8. Counsel for the petitioner has stated that charge-sheet was submitted in this case in the year 2006 and cognizance has been taken by order dated 27.11.2017, when lower court records was called for by this Court during hearing of this application.



9. Counsel for the State has submitted that no illegality has been committed by the Court below in taking cognizance. Petitioner is named in the written report.

10. Entire lower court records were called for, which have been received. From perusal of the lower court records, it appears that charge-sheet was submitted by the police on 18.11.2006. Thereafter, case was fixed on 18.12.2006 for hearing on the point of cognizance. On 18.12.2006, case was adjourned for 18.01.2017 for hearing on the point of cognizance. But, thereafter file was not produced before the Presiding Officer in the Court below, since 18.12.2006. It appears that file was produced before the Magistrate after receiving order dated 15.11.2017 from this Court passed in the instant case. Thereafter, the learned Magistrate by order dated 27.11.2017 has taken cognizance in the case.

11. Therefore, apparently, there is no laches on the part of the Magistrate, rather, it appears that record was not produced by the Office after receipt of charge-sheet before the Presiding Officer for more than ten years.

12. Petitioner is named in the written report. Learned Magistrate has mentioned in the impugned order that there are sufficient materials in the case diary against the Petitioners. The learned Magistrate has taken cognizance against the Petitioner on



the basis of materials in the case diary and the allegation made in the written report along with other accused persons for the offence under Section(s) 406, 409, 420, 120-B Indian Penal Code.

13. There is provision of limitation for taking cognizance of certain offences under Section 467 Cr.P.C. But, that provision shall have no application in the instant case as cognizance has been taken for the offence under Section(s) 406, 409, 420, 120-B Indian Penal Code.

14. Therefore, this Court does not find any illegality in the impugned order passed by the learned Court below.

15. This application is, accordingly, **dismissed**.

16. The District & Sessions Judge, Patna, is directed to make enquiry as to how office did not produce the record before the Presiding Officer on the next date fixed in the case i.e. on 18.12.2006 after submission of charge-sheet on 18.11.2006 and kept the record pending for more than ten years. The Office has produced the record on 27.11.2017 before the Presiding Officer after receiving the order of this Court dated 15.11.2017 by e-mail.

17. The District & Sessions Judge will conclude the enquiry within a period of three months from the date of receipt of copy of this order and take appropriate action against the person(s) found guilty for withholding the record in office and not producing



the same before the Presiding Officer for such a long period of ten years.

18. The District & Sessions Judge will send compliance report to this Court after conclusion of enquiry within a period of three months from the date of receipt of copy of this order.

19. In the meantime, the Court below will proceed with case in accordance with law and make efforts to conclude the trial expeditiously.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	31-07-2018
Uploading Date	15-09-2018
Transmission Date	15-09-2018

