

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40266 of 2016

Arising Out of PS.Case No. -91 Year- 2015 Thana -AMARPUR District- BANKA

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Koushalendra Kumar son of Sri Satyendra Kumar Singh resident of
Village/Mohalla - Bhikhanpur, North Tola, P.S. - Bhikhanpur, P.S. - Amarpur,
District - Banka.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.
Ms Babita Kumari, Adv.

For the Opposite Party/s : Mr. Mrs. Madhuri Lata, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 25-06-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for quashing the order dated 30.07.2016 passed by the learned Chief Judicial Magistrate, Banka in Amarpur P.S.Case No. 91 of 2015 by which the learned Magistrate has taken cognizance of the offences punishable under Sections 147, 148, 149 and 302 of the Indian Penal Code and summoned altogether ten accused persons including the petitioner to face trial.

2. The petitioner is one of the named accused in the First Information Report, which was instituted on the basis of fardbeyan of one Kanhaiya Choudhary on 24.03.2015 at 8.15 p.m. at Referral Hospital, Amarpur. In the FIR, apart from the petitioner, 13 others were named as accused. After institution of the FIR, the police



investigated the case and on completion of investigation submitted charge-sheet vide charge-sheet no. 135 of 2015 dated 21.06.2015. On receipt of the charge-sheet, learned Chief Judicial Magistrate, Banka took cognizance of the offence vide impugned order dated 30.07.2016.

3. It has been submitted by the learned counsel for the petitioner that though the petitioner and two others, namely, Neelesh Kumar Singh @ Karu Singh and Vinay Singh were not sent up for trial, the learned Chief Judicial Magistrate vide impugned order dated 30.07.2016 summoned them also to face trial along with the charge-sheeted accused persons even without making any reference in the impugned order regarding submission of final form against the petitioner and two others. He submitted that the impugned order passed by the learned Chief Judicial Magistrate clearly reflects that the same has been passed mechanically even without looking into the materials collected in course of investigation by the police.

4. On the other hand, learned counsel appearing for the informant submitted that the petitioner is one of the named accused and there is allegation that he also participated in the commission of the crime. He admitted that the police did not send him up for trial but there are materials against the petitioner also to put him on trial. He contended that it is not correct to say that the learned Chief Judicial Magistrate did not apply his judicial mind before passing the



impugned order.

5. I have heard learned counsel for the parties and perused the record.

6. The order impugned whereby cognizance of the offence has been taken reads as under :-

“Court of the C.J.M. Banka

Amarpur P.S. Case 91/15 (G.R. 593/15)

सरकार बनाम फुजल कुमार

30-7-16 काण्ड दैनिकी के साथ पुरक आरोप पत्र प्राप्त हुआ। देखा।

प्राथमिकी पुरक आरोप पत्र व काण्ड दैनिकी के अवलोकन

से अभियुक्त (1) कौशलेन्द्र सिंह (2) निलेश कुमार सिंह उर्फ कारू

सिंह, (3) अखिलेश सिंह, (4) विनय सिंह, (5) प्रमोद सिंह, (6)

राकेश उर्फ रत्न सिंह, (7) हेमंत कुमार सिंह, (8) अजय कुमार

सिंह, (9) कुणाल कुमार एवं (10) संतोष कुमार सिंह के विरुद्ध

धारा 147, 148, 149, 302 भा० दं० वि० के अंतर्गत प्रथम

दृष्ट्या मामला बनता प्रतीत होता है।

प्रासंगिक काण्ड में दिनांक 20.7.15 को धारा 147, 148,

149, 302 भा० दं० वि० के अंतर्गत अपराध का संज्ञान लिया गया

है। वही संज्ञान इस उपरोक्त सभी दस अभियुक्तों के विरुद्ध माना

जाएगा।

दिनांक 28.9.16 वास्ते उपस्थिति अभियुक्तों के विरुद्ध

सम्मन जारी करें।”

7. From perusal of the order extracted hereinabove, it would be manifest that though the learned Magistrate has recorded that he found a prima facie case against all the accused persons, there is nothing in the order to show that the learned Magistrate was even



aware of the fact that the police had not found culpability of the petitioner in the alleged offence. It is true that the court has the power to differ with the police report, but the order must reflect that such difference is on the basis of judicial application of mind. In the instant case, apparently, a mechanical order has been passed on receipt of the police report against all the persons, who were sent up for trial or not sent up for trial without discussing anything about the materials on record.

8. In that view of the matter, I set aside the order impugned dated 30.07.2016 passed by the learned Chief Judicial Magistrate, Banka in Amarpur P.S.Case No. 91 of 2015 and remit the matter back to him. The jurisdictional Magistrate shall taken into consideration the materials available on record and pass appropriate orders in accordance with law within two weeks from the date of receipt/production of a copy of the order.

9. With the aforesaid observation and direction, the application is allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28-06-2018
Transmission Date	28-06-2018

