

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.44568 of 2017**

Arising Out of PS.Case No. -702 Year- 2016 Thana -KATIHAR District- KATIHAR

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Aatma Ram @ Aatma Ram Agrawal Son of Late Sajjan Kumar Agrawal resident of  
Mangal Bazar, P.S.- Town, District- Katihar

.... .... Petitioner

Versus

The State of Bihar

.... .... Opposite Party

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**Appearance :**

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 15-05-2018**

Heard learned counsel for the petitioner and learned  
counsel for the State.

2. This application under Section 482 of the Code of  
Criminal Procedure (for short 'CrPC') has been filed by the  
petitioner for quashing the order dated 08.03.2017 passed by the  
learned Chief Judicial Magistrate, Katihar in Katihar P. S. Case No.  
702 of 2016 by which the petitioner has been summoned to face trial  
for the offences punishable under Section 420 read with 34 of the  
Indian Penal Code (for short 'IPC') and Section 11 of the Bengal  
Public Gambling Act, 1867.

3. A short and pointed argument has been made by the  
learned counsel for the petitioner. He submitted that the ingredients  
of the offence punishable under Section 420 of the IPC are not



attracted in the present case. The only other Section under which the first information report was instituted and on completion of investigation, cognizance has been taken is Section 11 of the Bengal Public Gambling Act, 1867, which prescribes punishment of a fine not exceeding Rs.50/- or imprisonment either simple or rigorous for a term not exceeding one calendar month. He submitted that the offence under Section 11 of the Bengal Public Gambling Act, 1867 has not been made cognizable and in that view of the matter, the police had no authority to investigate the case. On the basis of these submissions, he has submitted that the learned Magistrate without appreciating the aforesaid questions of law has wrongly taken cognizance of the offence and summoned the petitioner to face trial.

4. *Per contra*, learned counsel for the State submitted that Section 11 of the Bengal Public Gambling Act, 1867 confers jurisdiction upon the police officer to apprehend any person found playing for money or other valuable thing with cards without warrant of arrest and, thus, the police have the power to investigate the case and file a report. He submitted that there is allegation in the FIR that when the police party was on patrolling duty on the eve of Deepawali, gambling was going on in an old house and when the police raided that house, two boys were caught, who disclosed their name Suraj Kumar Mahto and Md. Saddam. After going through the case-diary, learned counsel for the State submitted that it has come



during investigation that the house in which the apprehended accused were playing cards belongs to the petitioner. He contended that whether or not the case under Section 420 of the IPC is made out can be seen by the court only during trial and not at this stage.

5. I have heard learned counsel for the parties and perused the record including the case-diary.

6. It would be manifest from perusal of the case-diary that the house in question was found locked and at the time of occurrence, neither the owner nor any of his family members was present there when the police raided the house. In the FIR, it has not been alleged that the petitioner dishonestly induced any person to play cards or that any person so deceived delivered any property to the petitioner. In the absence of any allegation of inducement, in my considered opinion, even on admitted facts, the ingredients of the offence punishable under Section 420 of the IPC were not attracted. The police could not have instituted the case under Section 420 of the IPC just in order to justify investigation into a non-cognizable. It has rightly been contended that so far as Section 11 of the Bengal Public Gambling Act, 1867 is concerned, the same prescribes a maximum punishment of one month or a fine not exceeding Rs.50/-. There is nothing under the said Act to show that the offence has been made cognizable. Once the offence is not made cognizable under the Bengal Public Gambling Act, 1867, as per Schedule-11 of the CrPC,



the same has to be treated as non-cognizable because the offence is punishable with imprisonment of less than three years. Once it is found that the only offence under which the police instituted the FIR was a non-cognizable offence, the investigation conducted by the police was without jurisdiction in view of Section 155(2) of the CrPC, which reads as under :-

“**155(2).** No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.”

7. The investigation of a non-cognizable offence by the police without permission of the competent Magistrate was itself illegal. The said defect is not even curable under Sections 460 and 465 of the CrPC. In that view of the matter, the charge-sheet filed without permission of the Court itself was not justified.

8. In view of the aforesaid discussions, the impugned order dated 08.03.2017 passed by the learned Chief Judicial Magistrate, Katihar in Katihar P. S. Case No. 702 of 2016 is hereby quashed.

9. The application stands allowed.

**(Ashwani Kumar Singh, J.)**

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