

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46981 of 2013

Arising Out of PS.Case No. -204 Year- 2011 Thana -KOTWALI District- PATNA

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1. Manoj Kumar, son of late Muneshwar Prasad, resident of 'Manoram', East
Borig Canal Road, Police Station- Budha Colony, District & Town - Patna
.... Petitioner/s

Versus

1. The State of Bihar.
2. Nand Kishore Pandey, son of Sri Kamleshwar Pandey, resident of 332A,
Gulistan Apartment, by the Side of Hira Palace, Dak Bunglow Road, Police
Station - Kotwali, District - Patna
.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gayanand Roy, Advocate
For the Opposite Party/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 10.07.2013 passed by the Judicial Magistrate, 1st class, Patna, in Kotwali P.S. Case No.204 of 2011 by which the learned Magistrate has rejected the petition filed by the petitioner for his discharge under Section 239 Cr. P. C.

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

Name of counsel for the Opposite Party No.2 is appearing in the daily cause list, but none has appeared on behalf of the Opposite Party No.2.



Counsel for the petitioner has submitted that the petitioner and the informant are practicing lawyer. Mere suspicion has been raised in the written report. There is no specific allegation against the petitioner. The Court below has rejected the petition of discharge on the ground that there is strong suspicion. Charge can even be framed on the basis of strong suspicion after relying on the judgment of the Hon'ble Supreme Court in the case of *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and others* reported in *AIR 1980 Supreme Court 52*.

Learned counsel for the State has submitted that the Court below has passed reasoned order, which does not require any interference.

In the written report filed by the informant, it is alleged that the Informant is President of Taxation Bar Association, Patna. He along with Joint Secretary of the Association went to open office on 02.05.2011 at Hall No.G-3 of the Association situated at Revenue Building, Patna. The informant found that lock of the Association has been broken and another lock has been placed in place of earlier lock. It has further been alleged by the informant that on seeing from the glass of the door, it appeared that after breaking the lock, the culprits have entered inside and damaged the Board of the Association and erased some names from the Board and some articles were also stolen. It has been alleged that accused



persons have earlier also caused loss to the Association. Information of such occurrence was given to the police as well as Bihar State Bar Council. The informant alleged that the occurrence has been committed by the accused persons named in the First Information Report and details about damage and loss of property can be ascertained only after the lock is opened.

From the impugned order, it appears that the learned Magistrate has mentioned that there is no material except suspicion in the case diary, which may connect the petitioner. None has seen the petitioner in and around the place of occurrence during relevant period. The witnesses examined by the police during investigation have simply stated that the lock of the door was changed and articles of the office were lying in disturbed and haphazard manner. They did not speak as to disappearance of any article, which even be presumed to be stolen.

Learned Magistrate has, however, after mentioning all these facts has rejected the petition for discharge after relying on the aforesaid judgment of the Hon'ble Supreme Court and has stated charge can even be framed on the basis of strong suspicion.

This Court feels that learned Magistrate has not been able to understand the judgment of the Hon'ble Supreme Court mentioned above in its true spirit. Strong suspicion does not mean any bald suspicion. There must be some materials to support such



suspicion. The Hon'ble Supreme Court has held that strong suspicion founded upon materials would be sufficient to frame charge in the case.

In the instant case, in spite of valid service of notice to the Opposite Party No.2, none has appeared.

Case diary has been received.

From the case diary as well as narration made by the learned Magistrate in the impugned order, this Court finds that there is no cogent material to directly involve this petitioner in the aforesaid occurrence.

In such circumstances, this Court is of the view that the impugned order is not in accordance with law.

Accordingly, impugned order dated 10.07.2013 passed by the Judicial Magistrate, 1st class, Patna, in Kotwali P.S. Case No.204 of 2011 along with entire criminal proceeding against the petitioner is hereby quashed.

This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11-04-2018
Transmission Date	11-04-2018

