

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48015 of 2014

Arising Out of PS.Case No. -26 Year- 2010 Thana -SAHAR District- BHOJPUR

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1. Shyam Yadav @ Suman Son of Late Abadh Yadav, Resident of Village-
Barsham, P.S.- Rudrapur, District- Madhubani, Junior Engineer Sone Nahar Saha
District Ara

.... Petitioner/s

Versus

1. The State of Bihar null null
2. Prakash Kumar Sinha, B.D.O. Sahar, District- Ara

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gagandeo Yadav

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

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 17-07-2018

Notice upon O.P. No. 2 has been validly served but
none appeared on behalf of O.P. No. 2.

The petitioner seeks quashing of the order dated
06.01.2011 passed by the learned Judicial Magistrate 1st Class, Ara in
connection with Sahar P.S. Case No. 26 of 2010, whereby cognizance
has been taken against the petitioner.

Learned counsel for the petitioner has submitted that the
petitioner is a government servant. He was posted as Junior Engineer
at the relevant time which would appear from the F.I.R. itself. It has
further been submitted that F.I.R. has been filed for dereliction of duty.
The departmental proceeding could have been initiated for the same. No
criminal offence is made out on the basis of allegation made in the



written report.

Learned counsel for the State has submitted that the court below has taken cognizance after submission of charge-sheet. The written report has been filed by the B.D.O., Sahar, Bhojpur alleging therein that the District Magistrate, Bhojpur had given direction to the A.D.M., Bhojpur to complete the work of revised voter list of the Assembly Constituency No. 196 for Tarari Assembly Election and work of photography at Block level was to be done. The petitioner and other F.I.R. named accused disobeyed the order given by the higher authority. The work regarding the Assembly Election of Tarari Assembly was not completed. The police after investigation submitted charge-sheet for the offences under Section 166 of the Indian Penal Code and Section 134(1) of the R.P. Act. The learned court below, *prima facie*, found the case true under Section 166 of the Indian Penal Code and Section 134(1) of the R.P. Act and took cognizance against the petitioner.

From perusal of the impugned order, this Court finds that the court below has passed the impugned order in mechanical manner on the basis of the charge-sheet submitted by the police.

This Court does not find any ingredient of offence under Section 166 of the Indian Penal Code. It is mentioned in the written report itself that the petitioner was posted as Junior Engineer at the



relevant time. As such, he was serving as Government servant. The authority concerned was competent to initiate departmental proceeding against the petitioner for dereliction of duty as alleged in the written report.

In fact, no any criminal offence is made out against the petitioner on the basis of allegation made in the F.I.R. Therefore, the impugned order dated 6.1.2011 passed by the court below along with entire criminal proceedings against the petitioner is hereby quashed.

This Criminal Miscellaneous is accordingly allowed.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	

