

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.63374 of 2017

Arising Out of PS. Case No.-7 Year-2015 Thana- KASMA District- Aurangabad

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Tarique Zaffar @ Raja, Son of Ehteshamul Haque, Resident of Tetar Chak,
P.S.- Kasma, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Md. Manwar, Son of Md. Muslim Rai, Resident of Village- Sahganj, P.S.-
Kasma, District- Aurangabad.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Shri Shambhu Shankar Thakur, Advocate
For the Opposite Party/s : Shri Shyameshwar Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2 03-01-2018 Heard Sri Shambhu Shankar Thakur, learned counsel for
the petitioner and learned Additional Public Prosecutor.

The sole petitioner, has approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to quash an order dated 16.04.2015 passed by learned Judicial Magistrate 1st Class, Aurangabad (hereinafter referred to as “Magistrate”) by which the learned Magistrate has taken cognizance of offence under Sections 323/ 341/ 325/ 504 of the Indian Penal Code , 1860 and summoned the accused persons including the petitioner.

Learned counsel for the petitioner submit that it was mistake on the part of the investigating officer, who though had incorporated the name of the petitioner in column no. 12 of the



charge sheet which is meant for “accused not sent- up for trial”, in last paragraph of the brief history of the charge- sheet inadvertently it was indicated as if petitioner along with one another F.I.R. named accused person was also sent - up for trial, however, in the charge-sheet in the brief history as well as in column no. 12 the investigating officer has categorically stated that no witness has supported the case against the petitioner. Meaning thereby, that petitioner was discharged, however it appears that the learned Magistrate without application of mind, only on perusal of last paragraph of the charge-sheet, has passed order of cognizance. It has been argued that there is no material to connect the petitioner in the present crime and learned Magistrate, in a mechanical manner, has passed order of cognizance.

Besides hearing learned counsel for the parties, I have also perused the materials available on record particularly the copy of charge-sheet, which has been brought on record as Annexure- 2 to the present petition. On perusal of the charge-sheet it is very much evident that in column no. 11 i.e. “particulars of accused persons charge- sheeted” name of only one accused i.e. Ehteshamul Haque @ Heshamul Haque was mentioned and petitioner’s name is mentioned in column no. 12



i.e. “particulars of accused persons not charge- sheeted”. Even at page no. 4 of the charge-sheet i.e. brief history of the accused it has specifically been mentioned that none of the witnesses have stated showing involvement of the petitioner, however, some error has occurred in last paragraph of the charge -sheet and it appears that the learned Magistrate only on examination of last paragraph has summoned the petitioner also to face trial. It is true that even in case in which an accused is not sent -up for trial, the learned Magistrate at the time of cognizance is well competent to take cognizance of offences, but if such accused is not charge-sheeted, the learned Magistrate while differing with the police report is required to succinctly indicate reasons, but on perusal of the impugned order the Court is satisfied that no plausible reason has been assigned for differing with the police report, and as such, the Court is of the opinion that the order impugned i.e. order dated 16.04.2015 passed by Sri Surendra Kumar Mishra , learned Judicial Magistrate 1st Class , Aurangabad in Kasma P.S. Case No. 07 of 2015, G.R. No. 118 of 2015 requires interference. Accordingly, the order impugned is hereby set aside with indication that if the learned Magistrate proposes to proceed against the petitioner also, he is required to assign succinct



reasons for differing with the police report.

With above observation, the petition stands allowed.

(Rakesh Kumar, J)

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