

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34840 of 2017

Arising Out of PS.Case No. -25 Year- 2016 Thana -BAHADURPUR District- PATNA

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1. Shankar Yadav @ Akhilesh Yadav, S/o Kamala Yadav, Resident of Village- Bhikhanpur, P.S.- Konch, District- Gaya at present residing at Jai Mahavir Colony, Bahadurpur, P.S. Bahadurpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhirendra Kumar Sinha

For the Opposite Party/s : Mr. Sri Khurshid Anwar

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 28-03-2018 Heard learned counsel for the petitioner and learned counsel for the State.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 25.04.2016 passed by the learned Judicial Magistrate 1st Class, Patna City in Bahadurpur P.S. Case No. 25 of 2016 whereby he has taken cognizance of the offences punishable under Sections 25(1-B)(a), 26 of the Arms Act and Section 17 of the Criminal Law Amendment Act.

From perusal of the First Information Report, it would transpire that there is allegation that the Special Task Force on receiving confidential information raided the premises of the



petitioner and arrested him. The police force also recovered several incriminating articles including country made loaded pistol, live bullets and some documents. The allegations were found true in course of investigation and after perusing the First Information Report, seizure list, statements of witnesses recorded under Section 161(3) of the Cr.P.C. and the police report submitted under Section 173(2) of the Cr.P.C., the learned Magistrate found sufficient material to take cognizance of the offence and summoned the petitioner vide impugned order dated 25.04.2016.

It has been submitted by the learned counsel for the petitioner that the ballistic report shows that the alleged carbine said to have been recovered from the premises of the petitioner was not functional. He submitted that in view of the report of the ballistic expert the order taking cognizance of the offence and summoning the petitioner is bad in law and is fit to be set aside.

In my opinion, the argument is misconceived. The defence taken by the petitioner can be looked into by the court at the appropriate stage during trial. However, in view of the allegations made in the First Information Report, which was found true in course of investigation, I see no illegality in the order impugned whereby cognizance of the offence has been taken and



the petitioner has been summoned to face trial. Merely because an expert has given some adverse opinion in respect of one of the arms alleged to have been recovered from the premises of the petitioner, the same would not mean that the entire prosecution case would be bad in law. Moreover, the opinion of an expert is not the conclusive proof of a fact.

The application lacks merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

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