

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1534 of 2016

Arising Out of PS.Case No. -210 Year- 2015 Thana -JAMUI District- JAMUI

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Md. Riyaz Ahmad, S/o Md. Yunus, Resident of village- Chak Yusuf, Ward No. 2,
P.O.- Jamalpur Gogir, P.S. Gogri, District- Khagariya, At present Teacher +2 Janta
Uchha Vidyalaya Adsar, P.S.- Jamui, Dist.- Jamui

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gauri Shankar Thakur, Advocate.

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

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-09-2018

Re: I.A. No. 956 of 2016

This interlocutory application has been filed for amendment in Paragraphs-1, 2 and prayer portion of application for setting aside the order dated 18.12.2015 passed by learned Chief Judicial Magistrate, Jamui, in Jamui P.S. Case No. 210 of 2015 by which learned Magistrate took cognizance against the petitioner for the offences under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code.

For the reasons stated in this application, this interlocutory application is allowed and the same shall be form part of the quashing application.



Re: Cr. Misc. 1534 of 2016:

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the First Information Report of Jamui P.S. Case No. 210 of 2015 instituted for the offence under Sections 467, 468, 471, 420 and 120(B) of the Indian Penal Code pending in the court of Chief Judicial Magistrate, Jamui including the order dated 18.12.2015 by which the learned Magistrate has taken cognizance against the petitioner.

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

It has been submitted on behalf of the State that in the instant case charge sheet has already been submitted by the police after completing investigation and thereafter, the learned Chief Judicial Magistrate, has taken cognizance against the petitioner for the offence under Section 420, 467, 468, 471 and 120(B) of the Indian Penal Code. The petitioner has filed the aforesaid order in interlocutory application No. 956 of 2016. It has further been submitted that Hon'ble Court vide order dated 22.06.2015 passed in CWJC No. 15459 of 2014 has directed the State through the Education Department to publish a notice to the effect that in case any teacher of whatever category, has secured appointment on the basis of



fake or fabricated certificates, submits his resignation within fifteen days from the date of notice, it would be accepted and no proceeding would be initiated against him either for prosecution or for recovery of the amount already paid. It has further been submitted that in spite of aforesaid order, the criminal prosecution has been filed and police has submitted charge sheet against the petitioner.

Counsel for the petitioner has submitted that State has taken several adjournments in the case to file necessary counter affidavit but did not file any counter affidavit.

This Court finds that petitioner had to approach the State Government for withdrawal of the case on the basis of aforesaid direction of the Hon'ble Court.

The court below has on the basis of charge sheet submitted by the police and looking into allegation in the written report and material available in case diary took cognizance against the petitioner.

The court below is only required to see *prima facie* case at the time of taking cognizance.

Therefore, this Court is not inclined to interfere with the impugned order.

This Criminal Miscellaneous application is accordingly



dismissed.

Petitioner is given liberty to raise all the points as raised in this application in the court below during trial including at the stage of framing of charge which will be considered by the court below in accordance with law without being prejudiced by this order. The petitioner is also given liberty to take appropriate action against the State for violation of the order dated 22.06.2015 passed by this Hon'ble Court in CWJC No. 15459 of 2014, if so advised.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12/09/2018
Transmission Date	12/09/2018

