

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.60120 of 2018

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Ramanand Prasad son of Late Satya Narain Sah, resident of Mohalla-Shankar Chowk Satyam Marg, Sitamarhi, (Ward No. 2), P.S.- Sitamarhi, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Gobind Thakur son of Late Satrugan Thakur, resident of Garahiya Dumariya, P.S. and District-Sarlahi, Nepal at present Bhandepur, P.S. and District-Sitamarhi

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jainendra Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 03-10-2018 This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for restoration of Cr. Misc. No.44170 of 2017 which was dismissed on 13.04.2018 for want of prosecution.

It is submitted by the learned counsel for the petitioner that on 13.04.2018 his clerk failed to mark the case in the cause list as a result of which he could not appear before the court when the case was called out.

Having regard to the submission made above, the application is allowed.

Cr. Misc. No.44170 of 2017 is directed to be restored to its original file.



Cr. Misc. No.44170 of 2017

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 13.06.2017 passed by the learned Additional Chief Judicial Magistrate-1, Sitamarhi in T.R. No.120 of 2017 arising out of Dumra P.S. Case No.306 of 2011 whereby he has rejected the petition filed under Section 311A of the Cr.P.C. vide order dated 22.05.2017.

2. Learned counsel for the petitioner submitted that the order impugned passed by the learned Magistrate is erroneous as the court could have reached to a right conclusion only if the petition filed under Section 311A of the Cr.P.C. by the petitioner for obtaining specimen signature or handwriting of the informant of the case would have been allowed. He pleaded that to ascertain identity of the informant it was incumbent upon the court to allow the application filed by the petitioner.

3. On the other hand, learned counsel appearing for the State submitted that there is no error in the impugned order passed by the learned Magistrate. He submitted that from a reading of proviso to Section 311A of the Cr.P.C., it would be manifest that no order can be made for obtaining specimen signature or handwriting unless a person has at some time been arrested in



connection with such investigation or proceeding.

4. I have heard learned counsel for the parties and perused the record.

5. Admittedly, the petitioner has been made accused in the aforesaid case for the offences punishable under Sections 467, 468, 471, 419 and 420 of the Indian Penal Code. He had filed an application under Section 311A of the Cr.P.C. for obtaining specimen signature or handwriting of the informant of the case in order to ensure his identity.

6. Section 311A of the Cr.P.C. provides that if a Magistrate of the first class is satisfied that, for the purpose of any investigation or proceeding under the Cr.P.C., it is expedient to direct any person, including an accused, to give specimen signature or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signature or handwriting.

7. The proviso to Section 311A of the Cr.P.C. stipulates that no order shall be made under this Section unless the person has at some time been arrested in connection with such investigation or proceeding.

8. In view of the express provision prescribed in the



proviso to Section 311A of the Cr.P.C., the informant of the case could not have been ordered to give specimen signature or handwriting unless at some time he would have been arrested in connection with investigation or proceeding of Dumra P.S. Case No.306 of 2011.

9. It is not the case of the petitioner that the informant of the case was arrested in connection with investigation of Dumra P.S. Case No.306 of 2011. In that view of the matter, in the opinion of the Court, the learned Magistrate has rightly rejected the application filed by the petitioner by way of impugned order dated 13.06.2017. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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