

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11839 of 2015**

Arising Out of PS. Case No.-117 Year-2004 Thana- MOTIHARI TOWN District- East
Champaran

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Binod Kumar Son of Jitu Singh @ Jitu Prasad, R/o Mohalla- Thakurbari,
Baniyapatti, P.S.- Town Motihari, District- East Champaran

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ramakant Yadav

For the Opposite Party/s : Mr.Subhash Chandra Mishraapp

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER**

2 09-05-2019 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Mr. Anshuman Singh, learned counsel appearing on
behalf of petitioner submits that petitioner has filed the present
application for quashing of the order dated 30.12.2010 passed in
Town P.S. Case No. 117 of 2004, G.R. No. 965 of 2004 by the
learned Chief Judicial Magistrate, East Champaran, Motihari.

The brief facts for the purpose of deciding the case is
set out herein after; on 30.05.2004 informant gave report to the
local police alleging therein that the petitioner assaulted the
informant and his family members and also take away Rs.8500/-
from his pocket. After lodging the F.I.R. the police investigated
the case and after investigation police submitted final form for



indicating therein that the allegation against the petitioner is false.

The learned Magistrate differing with the final form took cognizance of the offence. Mr. Anshuman Singh learned counsel for the petitioner submits that the Magistrate may in appropriate case differ with the final form submitted by the police while but exercising power the Magistrate is required to consider the material and assign reasons for differing with the final form submitted by the police. In support of his contention Mr. Anshuman Singh has placed reliance on the judgment of this Court reported in **2011(1) PLJR 393**. The then Hon'ble Chief Justice of Patna High Court formulated the core principle in para 8 and 13 of the aforesaid judgment. His lordship formulated the parameters for the Magistrate when he differs with the final form submitted by the police after investigation and taking cognizance. In the judgment (Supra) there is emphasis on application of mind to the material for differing with the final form submitted by the police.

Mr. Anshuman Singh submitted that although the Magistrate has referred to the case diary but there is absolutely no discussion what was the material in the case diary which led the Magistrate to differ with the final form submitted by the



police. The application of judicial mind mean consideration of objective material for forming opinion and reason for decision.

Mr. Anshuman Singh submitted that in the instant case no prudent man can find any reason in the order taking cognizance by the Court below differing with the final form submitted by the police after investigation. Referring to Annexure-2 he submitted that the Chief Judicial Magistrate has passed cryptic order. The police has submitted final form in the case of Surendra Prasad, Vinod Kumar but what was the material which led the learned Chief Judicial Magistrate to discharge Surendra Prasad and cognizance was taken against this petitioner. On perusal of the order the Court does not find any discussion for distinguishing the case of the petitioner from the case of Surendra Prasad who appears to be on the same footing like to the petitioner but in his case he was discharge and cognizance was taken against this petitioner. The Court below has failed apply his mind while taking cognizance and discharging co-accused Surendra Prasad at the stage of taking cognizance.

The Court of the considered view that the order dated 30.12.2010 is cryptic order and cannot sustain as it does not satisfy the requirement of application of mind at the stage of



taking cognizance differing with the final form submitted by the police.

Accordingly, the application is allowed and the order dated 30.12.2010 is quashed.

(Anil Kumar Upadhyay, J)

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