

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7455 of 2015**

Arising Out of PS. Case No.-10 Year-2013 Thana- MAGADH MEDICAL COLLEGE
District- Gaya

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Dhananjay Dubey, S/o Late Sudarshan Dubey. Resident of Mohalla- Magadh
Colony, Road No. 7, P.S.- Magadh Medical College, District- Gaya.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Dudheshwar Singh, Advocate
For the Opposite Party/s : Mr.Nagendra Pd., A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 01-07-2019

Heard learned counsel for the parties.

2. Petitioner is informant of Magadh Medical Police
Station Case No.10 of 2013, registered under Sections 341, 323,
324, 325 and 379/34 of the Indian Penal Code.

3. The learned Chief Judicial Magistrate, Gaya by
order dated 25.09.2013 took cognizance on the basis of Police
report filed under Section 173 of the Code of Criminal Procedure
for the offences under Sections 341, 323, 325, 504/34 of the
Indian Penal Code and turned down the prayer of the petitioner to
take cognizance under Sections 307 and 326 of the Indian Penal
Code also.

4. Prayer was on the ground that Police recorded the
Fardbeyan by obtaining signature of the informant on a plain



paper after changing the F.I.R., though serious allegation was there.

5. The petitioner challenged the order of the learned Chief Judicial Magistrate, Gaya before the learned Sessions Judge, Gaya in Criminal Revision No.75 of 2014. By order dated 21.11.2014, the learned Sessions Judge has refused to interfere with the order of cognizance and dismissed the criminal revision. Thereafter, the present application has been filed under Section 482 of the Code of Criminal Procedure.

6. Preliminary objection is that second criminal revision is not maintainable in view of the bar under Section 397 of the Code of Criminal Procedure. Therefore, inherent power cannot be exercised under Section 482 of the Code of Criminal Procedure to circumvent the statutory power contained in Sub-section 3 of Section 397 of the Code of Criminal Procedure.

7. I find substance in the submission aforesaid. This application has been filed in the guise of second criminal revision. Hence, it is not maintainable. Accordingly, it stands *dismissed* as not maintainable.

8. However, the petitioner would be at liberty to raise his grievance at the time of framing of the charges and the same shall be considered without being prejudiced by the fact that



cognizance has not been taken for the offences for which the petitioner prays for framing of the charges. However, the prayer should be considered only on the basis of material available on the record.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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