

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.24565 of 2015

Arising Out of PS. Case No.-27 Year-2014 Thana- BIND District- Nalanda

Krishna Nandan Prasad Son of Late Prayag Mahto resident of Village -
Utarthu, P.S. - Bind, District – Nalanda. Petitioner/s

Versus

1. State Of Bihar
2. Kumar Shahsi Bhushan Singh Son of Late Bansi Prasad resident of Village -
Utarthu, P.S. - Bind, District – Nalanda. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Chandra Bhushan Singh, Adv
For the Opposite Party/s : Mr.Shyam Kumar Singh, APP

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

Date : 21-08-2019

Heard learned counsel for the parties.

2. The petitioner has challenged the order of cognizance dated 02.12.2014 passed in Bind P.S.Case No.27 of 2014 by learned Judicial Magistrate-1st Class, Nalanda, whereby the learned court below has taken cognizance for offences under Sections 341,323,325,307,504 and 34 I.P.C.

3. The challenge is on the ground that the allegation is general and omnibus. There is evidence that on the date of occurrence, the petitioner was at some other place and not at the place of occurrence. Moreover, the petitioner had lodged earlier case against the informant of this case and just to take revenge, the present false case has been lodged. The police after investigation did not send up the petitioner for trial, however, the learned court below differed with the police report and took cognizance against the petitioner also.



4. The petitioner has got no criminal antecedent and his date of birth is 15.01.1938 as mentioned in the pension paper.

5. The law is well settled that the Magistrate can differ with the police report submitted under Section 173 Cr.P.C. provided that there is material in the case diary. Petitioner does not dispute that there is material against the petitioner in the case diary. Therefore, the impugned order cannot be interfered only for the reason that the police did not submit chargesheet against the petitioner.

6. The probable defence of the petitioner that he was not present at the place of occurrence, at the time of occurrence would be looked into at the appropriate stage of trial and cannot be gone into at the stage of cognizance. The allegation of malicious prosecution to doubt the prosecution version is also subject matter of trial.

7. Therefore, I do not find any merit in this application.

Accordingly, it stands dismissed as devoid of any merit.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
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