

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71586 of 2018

In
CRIMINAL MISCELLANEOUS No.56221 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Ajay Kumar @ Ajay Kashyap @ Ajay Singh, Son of Sri Rudrapratap,
Resident of Village- Chhokera-Serpur, P.S. Mondua, District Ambadkar Nagar
(UP) at Present residing at M-153, Ridham Apartment, GIDC, Naroda, Ingal
Sol Rand, P.S. Naroda, District Ahmedabad.

... .. Petitioner

Versus

1. The State of Bihar.
2. Vigilance Bureau through its A.D.J. Vigilance Dept. Govt. of Bihar, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. P.K. Shahi, Senior Advocate
		Mr. Shama Sinha, Advocate
For the Opposite Party/s :		Mr. Sri Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 10-07-2019 Heard Mr. P.K. Shahi, the learned Senior counsel

 appearing on behalf of the petitioner and Mr. Ajay Mishra, the

 learned Additional Public Prosecutor.

The petitioner has filed this petition for modification
of order dated 20.07.2018, passed in Cr. Misc. No.56221 of
2017. Learned counsel for the petitioner submits that the
petitioner after perusal of the order dated 20.07.2018 passed in
the aforesaid criminal miscellaneous noticed certain error of
records in page 7, 8 and 9 of the order. It is submitted that in
para 2 of page 7, the police arrested Pawan Kumar and Bipin
Kumar but the name of Vinit Kumar and Pawan Kumar have



appeared as the persons who were arrested on 22.02.2017. It is further submitted that in para 8 of the order, it has been written “it also transpires that the printed question papers were sent through whatsapp message to different persons 3 or 4 days before the commencement of the examination. The printed question papers of the examination scheduled to be held on 05.02.2017 was circulated on whatsapp on 29.01.2017.” It is submitted that as per the police report, printed papers of examination held on 29.01.2017 were circulated on WhatsApp on 29.01.2017 and it is not printed question papers but answer of the examination scheduled to be held on 05.02.2017 which were circulated on 29.01.2017. It is further submitted that in continuing page of 8 and 9 of the order, it is mentioned that there is material to show that the printed question papers were leaked about four days before commencement of examination and this part of the order is error of record. It is submitted that printed question papers were not leaked before the commencement of examination rather printed question papers were leaked on the day of examination about an hour or half before examination. It is further submitted that final form/report submitted under Section 173 of the Code of Criminal Procedure does not mention the fact about the leakage of question papers



prior to the commencement of examination and any material collected during the course of investigation with regard to circulation of question papers prior to commencement of examination cannot be relied upon or taken into consideration during the course of trial. It is also submitted that such error of record will prejudice the trial of the petitioner and, therefore, the petitioner submitted this petition for modification of the order.

Mr. Ajay Mishra, the learned Additional Public Prosecutor contending the submissions of the learned Senior counsel for the petitioner submits that save and except one typographical error that instead of Bipin Kumar, Vinit Kumar has been typed, there is no other error of record in the order. It is submitted that the police during the course of investigation at page 1399 and on wards of the case diary disclosed that the question papers and the answer keys were circulated on WhatsApp before commencement of the examination. The final report is the summary of the evidence collected during the course of investigation. Thus, the petition does have any merit.

Having considered the submissions of both sides and on perusal of the records, I find that Pawan Kumar, Bipin Kumar and Navnit Kumar were arrested when the police raided the room after having received inputs of racket of leakage of



question papers and model answers and transmitting the same to the examinees, therefore, the name of Vinit Kumar is a typographical error but so far as the contention of the learned Senior counsel for the petitioner that there is error on record that question papers were circulated before the commencement of the examination is concerned, it transpires from perusal of the case diary that the question papers were also circulated much before the commencement of examination as it appears at page 1401 and onwards of the case diary. If the circulation of question papers before commencement of examination is not mentioned in the final form/report submitted under Section 173 of the Code of Criminal Procedure, it cannot be said that any material which does not find place in the final report but collected during the course of investigation cannot be relied upon. All the relevant materials collected during the course of investigation is part and parcel of the final report and the prosecution can bring on evidence during the course of trial even if the same part left out to be mentioned in final form/report submitted under Section 173 of the Code of Criminal Procedure as the entire case diary is part of the final report and given to the accused before commencement of trial, therefore, save and except the typographical error with regard to



the fact at page 7 that Bipin Kumar instead of Vinit Kumar was arrested alongwith Pawan Kumar and Navnit Kumar, there is no apparent error on the record and accordingly, this modification petition is *de void* of any merit and the same is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

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