

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.723 of 2019

Arising Out of PS. Case No.-219 Year-2016 Thana- BHAGWAN BAZAR District- Saran

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Ram Ayodhya Ray son of Late Chhathu Rai, Resident of Village-Lauva Kala,
P.S-Baniyapur, District-Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Deptt. Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Saran at Chapra.
4. The Deputy Superintendent of Police, Chapra.
5. The Station House Officer, Bhagwan Bazar, Police Station, Saran at Chapra.
6. Chandeshwar Rai, son of Tapeswar Rai, Resident of Village-Parsa, P.O- Amardah, P.S-Isuapur, District-Saran.
7. Biresh Kumar Singh son of Sudama Singh, Resident of Mohalla-Dahiyava Tari Par, P.S-Chapra, Muffasil, District-Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nagendra Prasad Yadav No.1, Advocate
For the Respondent/s : Mr.Kumar Vikarm, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 29-04-2019

This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing the official respondents to arrest respondent nos.6 and 7, who have been made accused in Bhagwanpur Bazar P.S. Case No.219 of 2016 instituted on the basis of complaint case no.1640 of 2016 which was referred to the police under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C.') for investigation by the learned Chief Judicial Magistrate, Chapra. The aforesaid case has



been registered under Sections 420, 406, 467, 471 and 120B of the Indian Penal Code.

2. It is submitted by the learned counsel for the petitioner that in course of investigation, the investigating officer issued notice to respondent nos. 6 and 7 under Section 41-A of Cr.P.C. and released them after taking personal bond. According to him, the police had no authority to release the respondent nos.6 and 7 on bond. Once an offence under Section 467 coupled with Sections 420, 406, 471 and 120B of the Penal Code registered against respondent nos.6 and 7, it was incumbent upon the police to have arrested the accused persons and remanded them to judicial custody.

3. The relevant section 41-A of the Cr.P.C. reads as under:-

"41A. Notice of appearance before police officer. – (1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear



before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.”

(emphasis mine)

4. The aforesaid provisions of the Cr.P.C. provides that in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41-A, the police officer shall issue a notice directing the person against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice. Further, sub-



section (2) of Section 41-A requires that where such a notice is issued to any person, he shall be duty bound to comply with the terms of the notice. Sub-section (3) thereof provides that till such person complies with the notice, he shall not be arrested in respect of offence referred in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

5. Thus, the argument, advanced on behalf of the petitioner that the police had no authority to release the noticee after the issuance of notice under Section 41-A of the Cr.PC. is meritless.

6. Since the accused respondent nos. 6 and 7 complied with the notice issued by the police, they have rightly been released by the police after taking bond.

7. In absence of any illegality in the action of the police, the application filed by the petitioner deserves to be dismissed.

8. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2019
Transmission Date	09.05.2019

