

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.697 of 2018

Arising Out of PS. Case No.-256 Year-2013 Thana- SIWAN MUFFASIL District- Siwan

1. Mithilesh Kumar Singh, Electrical Executive Engineer, Electric Supply Division, Siwan at Present posted as Electrical Executive Engineer (Project), Electric Supply Division, Madhepura (Bihar).
2. Mukesh Kumar Sharma, Son of Sri Balban Sharma, the then S.D.O. Cum Assistant Electrical Engineer, Electric Supply Sub-Division, Siwan Urban North Bihar Power Distribution Company Ltd. Deptt. Electric Supply Division, Siwan Urban at present posted as Assistant Electrical Engineer, Electric Supply Sub Division, Samastipur, Urban.

... .. Petitioner/s

Versus

1. State of Bihar
2. Vijay Kumar Singh, son of Sri Panchanand Singh Goshala Road Pakri More, P.S. Mahadeva O.P. Muffasil, Siwan, District - Siwan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Kirti Singh Mr. Vijay Kr. Verma Mr. Akhileshwar Singh
For the Opposite Party/s :		Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 29-04-2019

Heard learned counsel for the parties.

Petitioners, by means of this application
under section 482 of the Code of Criminal Procedure, have
invoked the inherent jurisdiction of this Court with prayer to
quash the order dated 17.02.2016, passed by the learned



Chief Judicial Magistrate, Siwan in Mufassil (Mahadeva)
P.S. Case No. 256 of 2013, whereby cognizance has been
taken against the petitioners for the offences under sections
341, 323, 504 and 506/34 of the Indian Penal Code.

The contention of learned counsel for the
petitioners is that petitioners are the Government servants.
No offence against the petitioners is disclosed and the present
prosecution has been instituted with *mala fide* intention for
the purposes of harassment. Both the petitioners are
government servants. Submission of learned counsel for the
petitioners is that earlier a case was also lodged by the
petitioner no. 2 against the brother of the present informant
for the offence under section 135 of the Electricity Act and in
retaliation to the same, the present false case has been filed
with an ulterior motive. It is further submitted that in view of
section 197 of the Code of Criminal Procedure, prior
sanction of the Government is necessary for taking
cognizance against a Government Servant, however, in the
present case, without any sanction, cognizance has been
taken against the petitioners.

From perusal of the materials on record
and looking into the facts of the case, the arguments



made by the learned counsel for the petitioners has force.
Prior sanction of the Government is necessary before taking
cognizance. As such, the order taking cognizance is not
tenable in law. The same is, hereby, quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

shailendra/-

AFR/NAFR	NA
CAV DATE	NA
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