

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25839 of 2015

Arising Out of PS. Case No.-81 Year-2014 Thana- BAHERA District- Darbhanga

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1. Mahendra Sah Son of Late Janak Sah
 2. Mira Devi W/o Mahendra Sah
 3. Naresh Sah, Son of Mahendra Sah,
 4. Ram Babu Sah, Son of Late Radhey Sah,
 5. Kewal Sah, Son Chaturbhuj Sah,
 6. Ganesh Sah
 7. Mahesh Sah Both sons of Shankar Sah
 8. Babita Devi @ Rekha Devi W/o Ganesh Sah
 9. Sangeeta Devi @ Savita Devi W/o Mahesh Sah
 10. Ashok Sah S/o Badri Sah
- All are resident of village- Kapileshwar Asthan, P.S. Radhika, District- Madhubani.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar, Advocate
For the Opposite Party/s : Mr. Parmanand Kumar APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date : 17-07-2019

Heard learned counsel for the petitioners and
learned Additional Public Prosecutor for the State.

2. The petitioners have challenged, in this
application, under Section 482 Cr.P.C., the order of cognizance
dated 18.03.2015 passed by Additional Chief Judicial
Magistrate, Benipur, in Bahera P.S. Case No.81 of 2014,
corresponding to G.R. NO.85 of 2014.



3. It appears that after investigation of the case police had not sent up the petitioners for trial. However, the learned Court-below differed with the police report and took cognizance. The impugned order reads as follows:

“I.O. of the case has submitted final form and case-diary under Sections 147,/148,341,323, 380 and 504 of the Indian Penal Code against shortage of witness.

Perused the FIR, final form and case-diary.

Accordingly, cognizance is taken for the offences according to FIR, namely, Mahendra Sah and nine others FIR accused persons. The same is kept in personal file for trial and disposal according to law fixing 25.04.2015.

Office issue summons to accused persons for their appearance.”

4. The perusal of the impugned order apparently reveals non-application of judicial mind. Once the Court-below decide to differ with the police report not sending up the petitioners for trial it was bound to discuss the material, which came against the petitioners, during the course of investigation. The impugned order does not reveal that as to what material were there against the petitioners to disagree with the police



report. Hence, the impugned order is not sustainable in law. Accordingly, the same is set aside and the matter is remitted back to the Court-below to pass order according to law within fifteen days from the date of receipt of a copy of this order.

5. Accordingly, the application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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