

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.908 of 2019

Arising Out of PS. Case No.-61 Year-2019 Thana- MOTIPUR District- Muzaffarpur

Umesh Ram Son of Late Bikhari Ram Resident of Village - Pana Chhapra,
P.S.- Motipur, District- Muzaffarpur

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary Home, Old Secretariat, Govt. Of Bihar, Patna
2. The Director General of Police, Government of Bihar, Old Secretariat, Patna Bihar
3. The Inspector General of Police, Muzaffarpur Bihar
4. The Senior Superintendent of Police, Muzaffarpur Bihar
5. The Dy. S.P. (West), Muzaffarpur Bihar
6. The Officer-in-Charge of Motipur Police Station, District- Muzaffarpur Bihar
7. Pawan Rai Son of Late Shiv Shankar Rai Resident of Village - Sadha Dumbar, P.S.- Motipur, District- Muzaffarpur

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Verma
For the Respondent/s	:	Mr. M. Nasrul Huda Khan

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 18-06-2019

This application under Article 226 of the Constitution of India has been filed by the petitioner for quashing the notice dated 16.03.2019 issued by the Assistant Sub-Inspector of Police of Motipur Police Station, Muzaffarpur issued under Section 41A of the Code of Criminal Procedure (for short 'Cr.P.C') whereby the respondent no.7, who has been made accused in Motipur P.S. Case No. 61 of 2019 dated 08.02.2019 registered under Sections 341, 323, 504 and 504 of the Indian Penal Code and Section 3(1)(r)(s)



of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, has been directed to appear for the purpose of inquiry in course of investigation at 10.00 a.m. on 18.03.2019.

2. It is submitted by the learned counsel for the petitioner that the investigating officer of the case has sent the said notice to the respondent no.7 in order to help him. He has contended that the gravity of the offence required immediate arrest of the respondent no.7, but in collusion with the accused, the investigating officer after issuing notice to him has failed to arrest him when he appeared before the police pursuant to the notice.

3. Per contra, learned counsel appearing for the State submitted that the statutory provisions prescribed under Section 41A of the Cr.P.C confers power upon the police officer to issue notice directing the persons against whom reasonable complaint is made or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence to appear before him. He has contended that by issuing notice the investigating officer has committed no illegality.

4. Having heard the parties, I find substance in the submission of the learned counsel for the State.

5. Section 41A 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.”

6. From a reading of the aforesaid provision, it would be manifest that where arrest of a person is not required under the provisions of sub-section (1) of Section 41, 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 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. Further, the person to whom the notice is issued is duty bound to comply with the terms of the notice. 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 forms an opinion that he ought to be arrested.

7. In the instant case, there is nothing on the basis of which it can be said that while issuing notice to the respondent no.7 the police officer has committed any illegality or irregularity.

8. In that view of the matter, I see no merit in this application. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.06.2019
Transmission Date	24.06.2019

