

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14253 of 2014

Arising Out of PS. Case No.-181 Year-2013 Thana- BAUSI District- Purnia

Khawaja Gharib Nawaj, S/o Late Khawaja Gholam Mohammed, R/o Village Achchepur, P.S. Dagarwa, District Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dhanesh Chandra Sah, S/o Late Eshwar Chandra Sah, R/o Village Kanharia, P.S. Dagarwa, District - Purnea.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Md. Helal Ahmad

For the Opposite Party/s : Mr. Anuj Kumar Srivastava, APP

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 06-03-2019

Heard learned counsel for the petitioner and
learned counsel appearing on behalf of the State.

Petitioner, by means of this application under Section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 07.01.2013, passed by Chief Judicial Magistrate, Purnea in connection with Baisi P.S. Case No. 181 of 2013, whereby cognizance has been taken against the petitioner for the offences punishable under Sections 406, 420 and 120(B)/34 of the Indian Penal Code.



The prosecution case, in short, is that the complainant asked his brother Dinesh Chandra Sah to get his land sold to someone. Thereafter, he and his family members brought the accused no. 5, petitioner, to the complainant and they negotiated to sale the land to the petitioner for a consideration amount of Rs. 11,00,000/-. The informant executed the sale deed in favour of the petitioner-accused no. 5, but the entire consideration money was kept by the accused nos. 1 to 4.

On the aforesaid allegations, the Complaint Case No. 2325 of 2013 was filed by Dhanesh Chandra Sah, opposite party no.2, which was subsequently registered as Baisi P.S. Case No. 181 of 2013.

Submission of learned counsel for the petitioner is that in this case, the police after investigation, submitted charge sheet for the offence under section 406, 420 of the Indian Penal Code only against co-accused Dinesh Chandra Sah and final form was submitted against this petitioner, but the learned Chief Judicial Magistrate, Purnea differing with the police report, took cognizance of the offence against this petitioner also. It is further submitted that there is no material in the case diary to show complicity of this petitioner in the alleged occurrence. Only on the presumption, the order taking



cognizance has been passed by the learned Magistrate. No specific reason has been mentioned for differing with the police report.

Learned Additional Public Prosecutor appearing for the State is not in a position to contest the above submissions.

Having heard learned counsel for the parties and perused the materials available on records, I find that the learned Magistrate without any cogent reason and in absence of any evidence against the petitioner in the case diary, took cognizance, which is not liable to be sustained. Accordingly, the order taking cognizance dated 07.01.2013 passed in connection with Baisi P.S. Case No. 181 of 2013 by the learned Chief Judicial Magistrate, Purnea is, hereby, quashed.

The application is allowed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2019
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