

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 51758 of 2014**

Arising Out of Complaint Case No.-3795 Year-2013 Thana- SARAN COMPLAINT CASE
District- Saran

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Atul Raj Son of Siya Ram Singh, at present working as Inspector of Police (Trainee), P.S. Derni District - Saran at Permanent Address Bengali Tola P.S. - Jakkanpur, District – Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Malti Devi Wife of Umesh Kumar Dixit Resident of Village- Bishwambharpur, P.S. - Derni, District - Saran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Ranjan Sinha, Advocate
For the Opposite Party/s	:	Mr. Manish Kumar No. 3 and Mr. Gajendra Kumar Singh, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 16-04-2019

Heard learned counsel for the petitioner; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That this is an application for quashing
of the order dated 18.2.2014 passed by Sri Anchal
Dwivedi, Judicial Magistrate, 1st Class, Chapra in
complaint case no. 3795/2013 corresponding to
T.R. no. 4377/2014 whereby and whereunder the
learned Magistrate took the cognizance against the
petitioners under section 323, 354 and 504 of the
Indian Penal Code which is quite illegal and
without material available on the record and as*



such the order dated 18.02.2014 is fit to be quashed.”

3. The Court finds challenge is to the order taking cognizance against the petitioner, which itself discloses that statement of three persons were also recorded by the Court during enquiry, prior to taking of cognizance. However, the Court finds that the same are not on record. The Court would only observe that it is the duty of the person, who comes before the Court, to bring on record all materials which are necessary for the matter to be considered by the Court. When statement of witnesses have been noticed in the order impugned, no way the petitioner could have filed the case without bringing those statements on record, as they are substantive and material facts, and it does not lie in the discretion of the petitioner to choose not to bring the same on record.

4. The Court, thus, finds that due to inadequacy in the petition, there cannot be proper consideration of the issue involved. Further, even the defence taken on behalf of the petitioner with regard to there being Station Diary Entry to indicate that the petitioner never went to the residence of the opposite party no. 2, supporting material was required to be brought on record, moreso, when the petitioner himself was the S.H.O. of the police station in question at the relevant time.



5. Be that as it may, the Court finds that the petitioner still has the opportunity of presenting all his defence before the Court below itself, at the time of framing of charge, when as a matter of right, the Court is required to consider the issues/facts/materials which may be produced on behalf of the petitioner.

6. Thus, the application stands disposed off with liberty to the petitioner to raise all points available to him, at the time of framing of charge, which shall be considered by the Court below, in accordance with law, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J.)

P. Kumar

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