

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.228 of 2017

Arising Out of PS. Case No.-55 Year-2015 Thana- BHAGALPUR GRP CASE District-
Bhagalpur

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Bhagwan Yadav Son of Late Dasrath Yadav Resident of Mohalla- Dixson
Road, Mundichak, P.S. Tilka Manjhi, District-Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shashi Ranjan Singh Son of Late Narendra Prasad Singh Resident of Village-
Lalapur, Bhadar, P.S.Kahalgaoon District-Bhagalpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Dr. Manoj Kumar
For the Opposite Party/s : Mr.Sri Brajendra Nath Pandey

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 10-01-2019 Heard learned counsel for the petitioner as well as learned
Additional Public Prosecutor.

It has been submitted at the end of the petitioner that the order impugned would not survive because of the fact that (a) FIR was registered against unknown for stealing the motorcycle by an unknown thieves, (b) case was registered under Section 379 IPC, (c) motorcycle has not been recovered from the possession of the petitioner, (d) there happens to be no material available in the case diary wherefrom it could be gathered that petitioner had stolen the motorcycle contrary to it, the I.O. after concluding investigation submitted charge sheet under Section 406 of the IPC and, the learned lower court in mechanical manner took cognizance punishable under Section 406 of the IPC and summoned the petitioner. It has also been



submitted that there happens to be vast difference in between an offence punishable under Section 379 IPC as well as 406 IPC, requiring two different ingredients that means to say, in a case of theft the property is to be removed without permission of the owner while for section 406 IPC there should be an entrustment which has been mis-utilized at the end of the accused. Incidence of theft cannot be theme of entrustment nor vice-versa so, no offence is made out.

The learned Additional Public Prosecutor opposed the same.

The Hon'ble Apex Court in Ghanshyam Sharma vs. Surendra Kumar Sharma & Ors. reported in 2015 Cr.L.J. 421 has observed that because of the fact that the offence whereunder case has been registered, the materials collected during course of investigation did not support the commission of any kind of offence, would not be a ground to quash the prosecution rather, the learned lower court will see at the stage of framing of charge and, if no charge is to be framed on account of deficiency of the materials, irrespective of the fact that order of cognizance will exists, discharge the accused.

In terms thereof, this petition is disposed of.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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