

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70869 of 2019

Arising Out of PS. Case No.-60 Year-2017 Thana- MUNGER MUFFASIL District- Munger

MD. OBAIS ALAM @ MD. OBAISE ALAM Son of Md. Khurshid Alam
Resident of Village - Mirjapur Vardah, P.S.- Muffasil, District - Munger

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 45262 of 2019

Arising Out of PS. Case No.-60 Year-2017 Thana- MUNGER MUFFASIL District- Munger

1. MD. ZULFIQUAR @ MD. ZULFAKAR ALI Son of Late Md. Islam
Resident of Village - Mirjapur Vardah, P.s.- Muffasil, Dist.- Munger.
2. Md. Naushad Alam Son of Late Mojib Resident of Village - Mirjapur
Vardah, P.s.- Muffasil, Dist.- Munger.
3. Md. Tipu Son of Md. Zulfiquar Resident of Village - Mirjapur Vardah, P.s.-
Muffasil, Dist.- Munger.
4. Md. Obais Alam @ Obaish Son of Md. Khurshid Resident of Village -
Mirjapur Vardah, P.s.- Muffasil, Dist.- Munger.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 70869 of 2019)

For the Petitioner/s : Mr.Ajit Kumar Singh

For the Opposite Party/s : Mr.Satyendra Prasad

(In CRIMINAL MISCELLANEOUS No. 45262 of 2019)

For the Petitioner/s : Mr.Ajit Kumar Singh

For the Opposite Party/s : Mr.Sanjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 14-11-2019 Heard the learned counsel for the petitioners and

the State.

Both the cases have been listed under the heading



“For Orders (on office notes)” on the direction of this Court.

Cr. Misc. No. 45262 of 2019 was filed, challenging the order passed by the court below, whereby the petition preferred under Section 228 (1) of the Code of Criminal Procedure has been refused.

During the pendency of the aforesaid petition, another application was filed by one of the accused persons for discharge under Section 227 of the Code of Criminal Procedure. The court below, on finding that an order under Section 228 (1) Cr.P.C. had already been passed, imposed a fine of Rs. 5,000 /- on the petitioner / Md. Obais Alam, which was directed to be deposited in the Nazarat, Civil Court, Munger within a period of one month of the aforesaid order.

Against the aforesaid order dated 20.08.2019, the petitioner has preferred Cr. Misc. No. 70869 of 2019.

There is no gainsaying that once an application under Section 228(1) Cr.P.C., preferred by the petitioner was dismissed, there was no occasion for the petitioner to have agitated for the same relief under Section 227 Cr.P.C.



Mr. Ajit Kumar Singh, learned counsel for the petitioner, on realizing the futility of preferring two petitions before the Court one after the other, seeks permission to withdraw Cr. Misc. No. 45262 of 2019 which was filed against the order by which the prayer made on behalf of the petitioner under Section 228(1) of the Cr.P.C. has been refused.

The Cr. Misc. No. 45262 of 2019 is dismissed as withdrawn.

Mr. Singh also does not press Cr. Misc. No. 70869 of 2019 but only submits that the order imposing fine be quashed.

Considering the statement of the counsel for the petitioner that such petition was mistakenly filed before the court below on wrong advise, this Court deems it appropriate to set aside the aforesaid direction of the court below in order dated 20.08.2019, whereby the petitioner / Md. Obais Alam @ Md. Obaise Alam has been directed to pay a fine of Rs. 5,000/- within a period of one month of passing of the order.



The order dated 20.08.2019 is not interfered with
except for waiving the requirement of payment of fine.

This petition is also therefore consigned to records
with the aforesaid modification in the impugned order dated
20.08.2019.

(Ashutosh Kumar, J)

skm/-

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