

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4530 of 2018

Arising Out of PS. Case No.-303 Year-2012 Thana- SITAMARHI District- Sitamarhi

Kishore Kumar Shahi @ Mithailal Singh S/o Sri Ashok Kumar Shahi, R/o Village- Punaure, P.S. and District- Sitamarhi.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vaidehi Raman Prasad Singh
For the Opposite Party/s	:	Mr. Ashok Kumar Singh

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 29-01-2020

Heard the parties.

Petitioner seeks quashing of the order dated 22.2.2016 passed by learned Chief Judicial Magistrate, Sitamarhi in Sitamarhi P.S. Case No.303/2012, Tr. No.1712/2016 by which cognizance has been taken under Section 302/34 of the Indian Penal Code against the petitioner and also for quashing the order dated 2.7.2016 passed by the learned Sessions Judge, Sitamarhi in Cr. Revision No.54/2016 dismissing the revision application filed by the petitioner against the aforesaid order.

Petitioner in this case has challenged the order taking cognizance against him on the ground that he is neither named in FIR nor there is any material against him during whole investigation in order to implicate him in this case. Petitioner



has been implicated in this case only on the basis of confessional statement made by Chanchal Kumar before the police which has no legal sanctity and cannot be used as material against him. Police after investigation, submitted final form against petitioner showing lack of evidence, however, the learned Magistrate on the basis of case diary found prima facie case to be made out against the petitioner.

It is well settled law that Magistrate at the stage of taking cognizance and summoning is required to apply his judicial mind to find out whether a prima facie case has been made out for summoning the accused person or not. The learned Magistrate is not required to evaluate the merits of the material or evidence collected during the investigation. Neither the truthfulness, the sufficiency and acceptability of the evidence can be considered at the time of taking cognizance nor the defence of the accused can be examined at this stage, as such, this Court does not find any error or infirmity in the order dated 22.2.2016 passed by the learned Chief Judicial Magistrate, Sitamarhi in Sitamarhi P.S. Case No.303/2012, Tr. No.1712/2016 and also the order dated 2.7.2016 passed by the learned Sessions Judge, Sitamarhi in Cr. Revision No.54/2016 and, accordingly, the present criminal miscellaneous petition is dismissed.



However, petitioner is permitted to raise all the issues raised in this petition as well as available to him under law at the time of discharge/framing of charge by the trial court.

The criminal miscellaneous application is disposed of with aforesaid liberty and direction.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

