

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.87141 of 2019

Arising Out of PS. Case No.-528 Year-2017 Thana- TURKAULIYA District- East
Champanan

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JAGDISH RAI S/o Late Deep Narain Rai R/o village- Gokhula Tola
Tarkulwa, P.S.- Banjariya, District- East Champanan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Parmanand Pd. Nr. Sahi
For the Opposite Party/s : Mr.Damodar Prasad Tiwary

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 08-01-2020

Heard learned counsel for the parties.

This application has been filed under Section 482 of the Cr.P.C for quashing the order dated 13.06.2018 passed by learned Chief Judicial Magistrate, Motihari in Turkauliya (Banjariya) P.S. Case No. 528 of 2017, by which learned court below took cognizance against the accused-petitioners for the offence punishable under Sections 363, 365 and 120B of the Indian Penal Code.

Informant in his written complaint has alleged that on 23.08.2017 at about 4:00 pm his minor son was playing at the Door of his house and thereafter became traceless and after



much search he could not be found.

On the basis of evidence collected during investigation, chargesheet was filed against petitioners, the court below found *prima facie* case to be made out against the petitioners and took cognizance for the offence punishable under Sections 363, 365 and 120B of the Indian Penal Code and issued summons for his appearance to face trial.

At the stage of taking cognizance the court has to form an opinion on the basis of materials available on record that whether a *prima facie* case is made out against the accused or not. Relevancy, adequacy and sufficiency of evidence cannot be considered at the stage of taking cognizance.

The defence of the accused cannot be considered at the time of taking cognizance. This Court in its inherent jurisdiction cannot substitute its view regarding sufficiency or adequacy of material before the court below at the time of taking cognizance and issuance of summons against accused as same is within exclusive domain of trial court, as such I am not inclined to interfere with the order dated 13.06.2018 passed by learned Chief Judicial Magistrate, Motihari in Turkauliya (Banjariya) P.S. Case No. 528 of 2017.

The criminal miscellaneous petition is dismissed.

However, the petitioner will be at liberty to raise all the



issues raised before this Court as well as other points available to him in accordance with law at subsequent stage i.e. at the time of framing of charge.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.01.2020
Transmission Date	13.01.2020

