

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10980 of 2021**

Arising Out of PS. Case No.-136 Year-2018 Thana- THAWE District- Gopalganj

PRAKASH SINGH @ RANA Son of Pradip Singh Resident of Sareya, Ward
No. 6, P.S.- Gopalganj, District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar
For the Opposite Party/s : Mr. Dashrath Mehta

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER**

2 28-04-2022 Heard learned counsel for the petitioner and learned
APP for the State.

The present application has been filed for quashing of the order dated 19.11.2019 passed in Trial No. 1376/2020 arising out of Thawe P.S. Case No. 136/2018, passed by the court of Chief Judicial Magistrate Gopalganj, whereby and where under the cognizance under Section 188 of IPC, 45(1) (XII) of the Prisoners Act and 25(1-B)a, 26(II)/35 of Arms Act has been taken.

FIR has been lodged by office of the Superintendent, Gopalganj Jail, alleging that the petitioner along with two others was coming to the jail after their production in Kuchaikot P.S. Case No. 218/2018. They were searched and there is recovery of two live cartridges from the three persons, including the



petitioner.

The learned counsel for the petitioner submits that from perusal of the seizure list, it is apparent that there is no specific allegation as to from whose conscious possession the live cartridges were recovered specifically. He submits that based on the seizure list, it cannot be concluded that the live cartridges were recovered from the petitioner. By making such submission he submits that the order taking cognizance is unsustainable.

Learned APP has opposed the prayer. It is submitted that ingredients of the offence for which the FIR has been lodged, are made out based on the allegations and seizure list, being part of the FIR. The factual denials of the petitioner that recovery was not from his possession or he shall not be held responsible for the recovery are the factual issues which have to be looked into at the appropriate stage.

Considering the rival submission, this Court is of the opinion that the factual denials/disputes raised by the petitioner's counsel denying the allegations in the FIR and the recovery attributed to the petitioner, are not issues which have to be examined by this Court exercising jurisdiction under Section 482 of the Cr.P.C.



However, petitioner would be at liberty to raise the
issue of recovery at the time of trial.

This application is dismissed.

(Madhuresh Prasad, J)

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