

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70938 of 2021**

Arising Out of PS. Case No.-140 Year-2014 Thana- BETTIAH CITY District- West
Champaran

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Jakir Ali @ Zakir Ali, S/o Late Abdul Gaffar @ Late Gaffar Miyan @ Late
Abdul Gafar R/o Village - Najani Chowk, P.S. - Bettiah (Town), District -
West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ashif Ekbal @ Tiblu Mian S/o Md. Mustafa R/o Hospital Road, Bettiah,
P.S.- Bettiah town, District - West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate
For the Opposite Party/s : Ms. Anita Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

- 4 28-07-2022 **1.** Heard the parties.
- 2.** This is an application for quashing of the order
dated 23.07.2021 passed by learned Additional District
and Sessions Judge 4th, Bettiah, West Champaran in
connection with Bettiah (Town) P.S. Case No. 140 of
2014, whereby and whereunder the informatory petition
bearing Informatory Petition No. 568MK(2013) was
rejected to be read as public document, in view of Section
74 of the Indian Evidence Act, 1872 and by the same
order, the defence evidence was closed.
- 3.** Learned counsel appearing for the petitioner
submitted that Informatory Petition dated 30.03.2013



bearing Informatory Petition No. 568MK(2013) before the S.D.M., Bettiah, West Champaran, was given against the informant of Bettiah (Town) P.S. Case No. 140 of 2014 besides some other persons, apprehending danger to his life and also apprehending his implication in false cases, under Section 39 of the Cr.P.C. with a prayer to consider the same as a public document under Section 74 of the Indian Evidence Act, 1872, as same was kept in public office of learned Chief Judicial Magistrate. It is submitted that order dated 23.07.2021 is depriving the petitioner from most valuable right of defending himself by not allowing the document to be treated as public document.

4. Learned counsel, while arguing over the subject, referred a judgment of our own High Court of F.A. No. 203 of 2011, dated 11.07.2018, which shows that informatory petition, was exhibited before the trial Court, therefore, it is submitted that same may be accepted and read as a public document.

5. Learned counsel appearing on behalf of O.P. No.2, submitted that merely on the ground as document is being kept in public office, which has not been created by the



public servant discharging public duty, cannot be said a public document.

6. It is important to quote the provision of Section 39 of the Cr.P.C. for the sake of convenience and better understanding, which is quoted as below:

39. Public to give information of certain offences.—

(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:—

(i) Sections 121 to 126, both inclusive, and Section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);

(ii) Sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) Sections 161 to 165-A, both inclusive (that is to say, offences relating to illegal gratification);

(iv) Sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);

(v) Sections 302, 303 and 304 (that is to say, offences affecting life);

26[(v-a) Section 364-A (that is to say, offence relating to kidnapping for ransom, etc.);]

(vi) Section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);



(vii) Sections 392 to 399, both inclusive, and Section 402 (that is to say, offences of robbery and dacoity);

(viii) Section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.)

(ix) Sections 431 to 439, both inclusive (that is to say, offences of mischief against property);

(x) Sections 449 and 450 (that is to say, offence of house-trespass);

(xi) Sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass); and

(xii) Sections 489-A to 489-E, both inclusive (that is to say, offences relating to currency notes and bank notes),

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term “offence” includes any act committed at any place out of India which would constitute an offence if committed in India.

7. It would be appropriate to reproduce Section 74 of the Indian Evidence Act, 1872, in above context and same as:-

74. Public documents.—*The following documents are public documents—*

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, 104[of any part of India or of the Commonwealth], or of a



foreign country;

(2) public records kept 105 [in any State] of private documents.

8. Learned counsel for the informant/O.P. No.2 has also relied upon the report, titled as ***Mahtab Din v. Kasar Singh and others*** reported as ***A.I.R. 1928 Lahore 640***, wherein, it has been held that public document not prepared by public servant in the discharge of his official duty, cannot be said public document. A reliance was also made upon a report, titled as ***Nittymanund Roy v. Abdar Raheem (1)*** of the Division Bench of Kolkata High Court, reported as ***1881 (7) Cal. 76***.

J. Zafar Ali, while authoring the report of ***Mahatab Din (Supra)*** observed as:- “

As regards the second: the said register of houses was prepared in 1856 and again in 1866 and in both the well in dispute was shown as “shamilat shahr.” Now the question is : Was the register a public document as defined in S. 74, Evidence Act, or was it an official book falling within the purview of S. 35 of that Act? There is no evidence to show that the registers were prepared by a public servant in the discharge of his official duty. The registers are kept in the record room of the Deputy Commissioner's office at Gujranwala, but the mere fact that they are kept in a public office does not lead to the inference that they are public documents. In Nittymanund Roy v. Abdar Raheem (1) a Division



Bench of the Calcutta High Court held that certain measurement records produced from the Collectorate were not public documents within the meaning of S. 74 where there was nothing to show that they were the record of measurements made by any Government officer. As already stated, there is nothing to show that these registers were prepared by any Government officer, or by any public servant whose duty it was to prepare them. Nor is there anything to show that the entries therein were made after due enquiry so that a presumption of correctness should attach to them. This being so, they are inadmissible in evidence.

- 9.** It is clear from the face reading of the Section 39 of the Cr.P.C. that informatory petition, which generally referred as “*Sanha*” is a document created by a person, aware of the commission of or of the intention of any other person to commit offences, prescribed thereto. It is not a document created by a public servant, while discharging official duty. It may be a relevant document, if disclosed intention as regard to commission of offences, actually, acted upon, but relevancy does not lead to a conclusion *ipso-facto* that informatory petition (*Sanha*) is a public document, which is created by a private person.
- 10.** Accordingly, present quashing petition is devoid of



any merit to attract the extra-ordinary power of this Court under Section 482 of the Cr.P.C., to quash order dated 23.07.2021 passed by learned Additional District and Sessions Judge 4th, Bettiah, West Champaran in connection with Bettiah (Town) P.S. Case No. 140 of 2014. It appears that petitioner, only to cause delay the pending proceeding, before the learned trial court, filed present petition.

- 11.** Accordingly, the present quashing petition, is being dismissed with a cost of Rs. 2,000/- (Rupees Two Thousand Only), payable to the informant of this case.

(Chandra Shekhar Jha, J)

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