

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57040 of 2015

Arising Out of PS. Case No.-46 Year-2014 Thana- SC/ST District- Aurangabad

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Ajay Yadav @ Ajay Kumar S/o Ramji Singh, resident of Village- Kansh, P.S. Barun, District- Aurangabad.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Dukhi Ram S/o Ramji Singh, resident of Village- Kansh, P.S. Barun, District- Aurangabad.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bhaskar Shankar
For the Opposite Party/s : Mr. Ram Shankar Das SPL.PP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 03-07-2023 Heard learned senior counsel for the petitioner, learned APP for the State and learned counsel for the O.P. No. 02.

This application has been filed on behalf of the petitioner for setting aside the order dated 01.10.2015 passed by learned ACJM-V, Aurangabad in G.R. No. 2490 of 2014 / SC/ST P.S. Case No. 46 of 2014.

Prosecution story in short is that the petitioner and other accused persons have assaulted the informant and his family members because the informant's wife was allotted 60



dec. of land but the same has been possessed by the petitioner and other accused persons.

Learned senior counsel for the petitioner has submitted that the petitioner is a qualified engineer and he has been falsely named in the FIR along with other family members because he had a bright career ahead as an engineer.

Learned counsel for the petitioner further submits that the the police also submitted final form, stating therein that the petitioner is innocent but the cognizance was taken against the petitioner by the learned Magistrate differing from the final form. He also submits that the impugned order is a cryptic and non-speaking order and in the impugned order the materials on which the Magistrate has relied have not been discussed. Lastly learned counsel for the petitioner has relied upon the Judgment of Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd and Anr. Vs. Special Judicial Magistrate and Ors. (1998) 5 SCC 749.***

Learned counsel for the O.P. No. 02 submits that in this case the trial is going on and three witnesses have been examined and this case cannot be quashed. He also submits that the injured has suffered injury on the hands of all the accused persons.



I have considered the submission of the parties.

From the impugned order, it appears that the impugned order is a cryptic and non-speaking order and is in teeth of the law laid down by the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd and Anr. Vs. Special Judicial Magistrate and Ors. (1998) 5 SCC 749.***

While differing with the final form the Magistrate should have mentioned the materials available on record, particularly when the accusation has been found false by the police during investigation.

The submission of the learned counsel for the O.P. No. 02 is that since the case has proceeded further in the trial, the cognizance order with regard to the petitioner cannot be quashed. In light of the law laid by the Hon'ble Supreme Court in the case of ***Anand Kumar Mohatta Vs. State (NCT of Delhi) (2019) 11 SCC 706,*** the aforesaid argument on behalf of the O.P. No. 02 is also fit to be rejected.

Once the trial has started against the petitioner on the basis of a cryptic and non speaking order which cannot be sustained in law then the further proceedings against the petitioner can also not be sustained.

In light of the above discussions, this application is



allowed.

Accordingly, the order dated 01.10.2015 passed by learned ACJM-V, Aurangabad in G.R. No. 2490 of 2014 / SC/ST P.S. Case No. 46 of 2014 is hereby quashed with regard to the petitioner only.

It is clarified that this order is passed with regard to the petitioner only and the trial of other accused persons shall continue.

(Sandeep Kumar, J)

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