

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22927 of 2021

Arising Out of PS. Case No.-2706 Year-2019 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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Prabhat Kumar Choudhary @ Prabhat Choudhary, Son of Ram Binod Choudhary, Resident of Village - and P.O.- Bandhar, P.S.- Hatuaauri Via Ilmas Nagar, Distt.- Samastipur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sri Lalit Agrawal, Son of Late Babu Lal Agrawal, Resident of Village - Durgapur Bada Bazar, Distt.- Katihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Mishra, Advocate Ms. Manini Jaiswal, Advocate
For the Opposite Party/s	:	Mr. Mritunjay Kumar Nirala, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 23-08-2024 At the outset, learned advocate for the petitioner seeks permission to make correction in the complaint case.

2.The permission is accorded and the same must be done in course of the day.

3. Heard Mr. Sanjeev Kumar Mishra, learned advocate appearing on behalf of the petitioner and Mr. Mritunjay Kumar Nirala, learned Additional Public Prosecutor for the State.

4. The petitioner while invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. seeking quashing of the order dated 31.01.2020 passed in



connection with Complaint Case No. 2706 of 2019 passed by the Chief Judicial Magistrate, Katihar by which cognizance has been taken for the offences punishable under Sections 323, 380, 384, 406, 420, 503 and 120(B) of the I.P.C.

5. Learned advocate for the petitioner advertg to the narratives made in the complaint submitted that even if the allegation taken to be true no offence much less against the petitioner is made out. Save and except the petitioner being arrayed as an accused in the accused column, there is no allegation as to whether he has anyway participated in cheating the complainant or made any overt-act of assault or snatching of money. It is next contended that the petitioner was only working as an employee of IIIM Limited of which Sharad Kumar Jha happens to be Director.

6. On the other hand, learned advocate for the State countering the submission of petitioner submitted that the order issuing summons to the accused persons cannot be faulted at this stage, there is allegation levelled against all the accused persons.

7. Having heard the parties and taking note of the fact, it would be apposite to observe that at the stage of order taking cognizance or summoning of the accused in a complaint case,



the Judicial Magistrate, prima facie, is required to be looked into the materials available on the record as to whether it constitutes any offence or not. It is trite that the order taking cognizance is of offence and not of the offender. At the time of cognizance, the Magistrate is not required to be looked into the defence or the materials or to evaluate the merit of the materials/evidences whether it would lead to conviction or acquittal. Be that as it may taking note of the submissions of learned advocate for the petitioner, this Court at this stage, not persuaded to the submissions of the leaned advocate for the petitioner and accordingly, this quashing application stands dismissed.

8. However, the petitioner is at liberty to file a petition for discharge at the time of framing of the charge with the submissions raised before this Court. On filing of such petition, the learned Court shall consider the submission of the petitioner as to whether any offence is made out against the petitioner and dispose of the same, in accordance with law.

(Harish Kumar, J)

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