

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71446 of 2022

Arising Out of PS. Case No.-194 Year-2019 Thana- BASOPATTI District- Madhubani

Vimlesh Devi @ Mithilesh Devi Wife of Ganga Prasad Yadav R/V- Naraila,
P.S- Basopatti, Dist- Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chedi Yadav Son of Manu Yadav R/V- Naraila, P.S- Basopatti, Dist- Madhubani

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Gagan Deo Yadav, Advocate
For the State	:	Mr. Jharkhandi Upadhyaya, APP
For the O.P. No.2	:	Mr. Bishweshwar Ram, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 20-09-2024 Heard Mr. Gagan Deo Yadav, learned Advocate for the petitioner and learned Additional Public Prosecutor for the State.

2. The petitioner has invoked the inherent jurisdiction of this Court by filing the present application under Section 482 of the Cr.P.C. assailing the order dated 14.09.2022 passed by the learned 3rd Additional Sessions Judge, Madhubani whereby and whereunder, the Criminal Revision Petition filed on behalf of the petitioner has been rejected, as also the order dated 26.02.2021 passed by the learned Judicial Magistrate, 1st Class, Madhubani arising out of Basopatti P.S. Case No.194 of 2019 corresponding to T.R. No.1916 of 2021 whereby the learned



Court has taken cognizance for the offences under Sections 323, 341, 307, 504/34 of the Indian Penal Code.

3. Learned Advocate for the petitioner while assailing the orders, aforementioned, contended that the allegation levelled in the FIR even if taken to be true in its entirety, no offence much less under Section 323, 341, 307, 504/34 of the Indian Penal Code is made out against the petitioner. It is further contended that the police after investigation having found no material against the petitioner has not sent up the petitioner for trial, however, differing with the final report the learned Judicial Magistrate 1st Class has taken cognizance for the offences aforementioned. Being aggrieved the petitioner preferred Criminal Revision Number 162 of 2021, but it came to be rejected by the impugned order, dated 14.09.2022 on non-est ground. Referring to the aforesaid order, the learned Advocate for the petitioner urged that the order impugned affirming the order taking cognizance is based upon Paragraph Nos.22, 23, 24 and 25 of the Case Diary; even in those paragraphs of the case diary there is no iota of any material/evidence against the petitioner constituting any offence and as such the impugned order is bad in law and on fact. The learned court while rejecting the Criminal Revision has also taken notice of the supervision note



of the inspector wherein he has stated that the involvement of the petitioner in the crime, in question, was not found but only on account of the fact that reason for such inference has not been assigned, did not interfere in the order taking cognizance.

4. At this juncture, Mr. Jharkhandi Upadhyaya, learned Advocate for the State countering the submission of the learned Advocate for the petitioner contended that at the time of order taking cognizance and for issuance of summons, the learned Magistrate is required to look into the allegation levelled in the FIR and the materials available on record in order to find out as to whether any offence is made out or not. The petitioner is named in the FIR and *prima facie* it appears that he along with others have actively participated in the crime, in question, and thus the order taking cognizance is not faulted in any of the manner.

5. Having heard the learned Advocate for the respective parties and taking note of the fact that the learned Magistrate has taken cognizance of the offences after perusal of the FIR and the materials collected during the course of investigation, no interference is required in the order taking cognizance. Suffice it to say that the cognizance is always for the offences and not against the offender. At the time of order



taking cognizance the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence to find out whether, *prima facie*, case is made out. The Magistrate is not required to look into the defence version or materials or arguments nor he is required to evaluate the merit thereof.

6. Be that as it may this Court does not find any infirmity in the order taking cognizance and the order passed by the revisional Court as the same are based upon materials disclosed in the order itself, satisfying the application of judicial mind. In view thereof, present application stands dismissed, however, with a liberty to the petitioner that in case the petitioner so pleases, she may file an application for discharge at the time of framing of the charge.

7. Accordingly, the present quashing application stands dismissed with the liberty aforesaid.

(Harish Kumar, J)

durgesh/-

U		T	
---	--	---	--

