

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.482 of 2022

Arising Out of PS. Case No.-106 Year-2018 Thana- RIGA District- Sitamarhi

Om Prakash Dhanuka Son of Late Purshottam Lal Dhanuka Chairman Cum
Managing Director , Riga Sugar Company Ltd., Resident of Village - Alipore
Terrace, 3rd Floor, 12 Raja Santosh Road, Kolkata, 700027.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal secretary, Home Deptt., Govt. of Bihar, Patna. Bihar
2. Principal Secretary, Home Deptt. , Govt. of Bihar. Bihar
3. The Superintendent of Police, Sitamarhi, Distt.- Sitamarhi. Bihar
4. The Station House officer , Riga , P.s.- Riga, Distt.- Sitamarhi. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ashish Giri, Sr. Adv.
Mr. Sumit Kr. Jha, Adv.
Ms. Riya Giri, Adv.
Mr. Pratim Raj, Adv.
For the Respondent/s : Mr.Md. Nadim Seraj

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 10-10-2025 Heard learned senior counsel for the petitioner.

02. The petitioner has approached this Court seeking
the following reliefs:-

*(i) To issue appropriate writ order/ direction
in the nature of certiorari for a quashing of
order dt. 03/04/2019 passed by Learned
ACJM- VI, Sitamari, in connection with G.R.
Case No. 1471/2018 arising out of Riga P.S.
Case No. 106/2018 by which the Learned
court below has taken cognizance for the
offences under Section 302, 120B/34 of the
I.P.C. and Section 27 of Arms Act.*

*(ii) To issue appropriate writ/ order/ direction
in the nature of certiorari for a quashing of
order dt. 30/11/2021 passed by Learned
ACJM- VI, Sitamari, in connection with G.R.
Case No. 1471/2018 arising out of Riga P.S.
Case No. 106/2018 by which the Learned
court below mechanically, without applying
its judicial mind issued the order of process
and further directed the office to issue*



summons against the petitioner.

(iii) To pass an interim/ad-interim relief for staying the further proceedings in connection with G.R. Case No. 1471/2018 arising out of Riga P.S. Case No. 106/2018 pending before the court of learned ACJM- VI, Sitamari, including any subsequent order passed if any, such as bailable/non-bailable warrants etc. and/or no coercive action be directed to be taken against the petitioner.

03. Learned senior counsel at the outset has pointed out that the present criminal writ petition has been filed under Article 226 and 227 of the Constitution of India. But judicial orders could not be challenged under Article 226. Learned senior counsel relied on the decision of Hon'ble Supreme Court in the case of ***Neeta Singh & Ors. Versus The State Of Uttar Pradesh & Ors. in Special Leave to Appeal (Crl.) No(s). 13578/2024*** which referred to the decision of ***Radhey Shyam vs. Chhabi Nath, (2015)5 SCC 423*** wherein it has been held that the judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 is distinct from jurisdiction under Article 226. Further a principle of law was laid down that challenge to judicial orders could lie by way of an appeal or a revision or under Article 227 of the Constitution and not by way of a writ under Articles 226 and 32 of the Constitution of India.



In **Neeta Singh** (supra) it has been held in paragraph 05 as under:-

*“Although **Radhey Shyam** (supra) dealt with judicial orders passed by civil courts, there cannot be a different standard for judicial orders passed by criminal courts. If a judicial order passed by a civil court cannot be challenged in a writ petition under Article 226 of the Constitution, a fortiori, a judicial order passed by a criminal court cannot also be challenged in a writ petition under Article 226.”*

Thus, learned senior counsel submits that since cognizance order passed by the learned trial court is under challenge, the said order cannot be challenged under Article 226 of the Constitution. But the present petition could be treated as one filed under Article 227 of the Constitution.

04. Learned senior counsel next submits that Part A Chapter XII Rule 3 Sub Rule (iii) and (v) of Patna High Court Rules provide as under:-

(iii) In the case of miscellaneous matters of Criminal Jurisdiction, the words "Criminal Miscellaneous (Bail)" / "Criminal Miscellaneous Miscellaneous (Modification)"/ "Criminal Miscellaneous (Restoration)"/ (Anticipatory Bail)" / "Criminal Miscellaneous (Quashing)"/"Criminal Miscellaneous (Transfer)" / "Criminal Miscellaneous (Cancellation of Bail)" / "Criminal Miscellaneous (Charge/ Discharge)"/"Criminal Miscellaneous (under Article-227)"



(v) Petition under Article-227 of the Constitution of India in respect of any order or any proceeding before any Criminal Court would be filed in Criminal Miscellaneous Jurisdiction.

05. Learned senior counsel further submits that in ***Neeta Singh*** (supra) it has also been held that nomenclature of the petition read with the substance thereof does matter and hence the present petition be treated as a criminal miscellaneous petition filed under Article 227 and it should be placed before a Bench having criminal miscellaneous roster.

06. Perused the record.

07. As the petitioner has challenged the initiation of criminal proceeding of Riga P.S. Case No. 106 of 2018 and submission of charge sheet and subsequent orders passed by the learned A.C.J.M.-6, Sitamarhi in connection with G.R. Case No. 1471 of 2018 arising out of Riga P.S. Case No. 106 of 2018, in light of orders of the Hon'ble Supreme Court in ***Neeta Singh*** (supra) judicial orders passed by a Criminal Court could not be challenged in a writ petition under Article 226 of the Constitution of India. As submitted by the learned senior counsel for the petitioner the present petition has also been filed under Article 227 and it be treated as the same, but this Court is not having the roster under Article 227. Moreover, a petition



under Article 227 is not a writ petition and this Bench has been assigned the roster of criminal writ matters. Therefore, the Court cannot proceed further in the matter in absence of assignment of matters filed under Article 227. In **Neeta Singh** (Supra) the Hon'ble Supreme Court in paragraph 15 has held as under:-

“15. In view of the decision in Prakash Chand (supra), we hold that nomenclature of a petition read with the substance thereof does matter. Much depends on what the subject matter of the petition is and who is entrusted to hear and decide it. A Judge of a high court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice cannot, if he (the Judge) finds that the petition filed under Article 226 should have ideally been filed under Article 227, treat the petition as one under Article 227 and proceed to hear and decide it, unless the Chief Justice has also assigned to such Judge petitions under Article 227 of the Constitution for hearing and decision. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227 for being placed before the learned Judge having assignment. This is mandatory and, therefore, one finds the caution sounded by this Court in the opening sentence of paragraph 26 of Pepsi Foods (supra) to be of extreme significance.”

08. Evidently, the present petitioner has been filed as a criminal writ petition and the Patna High Court Rules provides for nomenclature of Criminal Miscellaneous Jurisdiction for petition filed under Article 227 of the Constitution. For this



reason treating the petition to be one under Article 227 of the Constitution in terms of Rule 3(iii) and (v) of Chapter XII of Part A of the Patna High Court Rules, the present petition needs to be converted first into a criminal miscellaneous petition under Article 227 of the Constitution.

09. Accordingly, learned counsel for the petitioner is directed to convert the present petition into criminal miscellaneous petition under Article 227 of the Constitution within a week of opening of the Court after Chhath holidays. Thereafter the matter be placed before appropriate Bench after obtaining necessary permission from Hon'ble the Chief Justice since it seems no Bench has been assigned the roster of criminal miscellaneous petitions under Article 227 of the Constitution of India.

10. Office is directed to extend all cooperation towards conversion.

11. Interim order dated 21.08.2025 shall continue till the matter is placed before an appropriate Bench.

(Arun Kumar Jha, J)

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