

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19768 of 2013

Arising Out of PS.Case No. -176 Year- 2012 Thana -AJAMNAGAR District- KATIHAR

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1. Tarikur @ Tarik S/O Hussain Resident Of Village Kolhan, P.S. Azamnagar, District Katihar.

.... Petitione

Versus

1. The State Of Bihar.

2.. Habibur Rahman S/O Late Giyasuddin Haji Resident Of Village Kolhan, P.S. Azamnagar, District Katihar..

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bidhan Chandra Jha, Advocate

For the Opposite Party/s : Mr. Abhay Kr.Rai (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 13-07-2015 Heard learned counsel for the petitioner as well as learned APP along with learned counsel for the informant.

Petitioner has challenged order dated passed by learned Chief Judicial Magistrate, Katihar in connection with Azamnagar P.S.Case No.176 of 2012 whereby and whereunder petitioner including others have been summoned to face trial for an offence punishable under Sections 302 and 201 of the Indian Penal Code.

Earlier, Complaint Petition No.1450 of 2012 was filed by O.P.No.2 against the accused persons named therein including petitioner putting allegation that accused persons took away his son Md. Asghar aged about 15 years to work as labour on 27.4.2012 at Mithla Deep Railway Pool no.102 and during his stay at that very place, it has been alleged that Md. Asghar was murdered by the accused persons on 15.5.2012 whereupon he went to the place. However, he could not be able to trace out his son. He had also contacted the local police who assured to have FIR registered and being frustrated, lastly complaint was filed.

On the basis of the complaint petition, Azamnagar P.S.Case No.176 of 2012 under Sections 364, 302 and 120B of the Indian Penal Code was registered and after concluding the investigation, final form was submitted as a mistake of law in the background of the fact that for the very same occurrence, on the fardbyan of this petitioner Md. Tarikur @ Tarik, Madhepur, P.S Case No.84 of 1912 was already registered against Md. Mohibur Rahman for an offence punishable under Section 302 of the Indian Penal Code for committing murder of Md. Asghar wherein charge sheet has already been submitted and for reference, as per Annexure-4, charge has already been framed.

From perusal of the order impugned, it is apparent that learned lower court had differed from the opinion of the I.O which found legally permissible but at the same breath, he was not at all competent to look into the protest petition while taking cognizance of an offence against the petitioner on a police report because of the fact that consideration of protest petition can only be after acceptance of final form.

That being so, the order of cognizance based upon consideration of protest petition including other materials would not justify the order impugned. Consequent thereupon, the impugned order dated 10.1.2013 passed in Azamnagar P.S.Case NO.176 of 2012 is set aside.

The petition is allowed. The matter is remitted back to the learned lower court to proceed afresh in accordance with law.

(Aditya Kumar Trivedi, J)

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