

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38913 of 2012

- =====
1. Md. Ali Zafar S/O Manzur Alam R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 2. Shamim Akhtar S/O Late Jamil Akhtar R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 3. Faiyaz S/O Abdul Ghafoor R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 4. Rahimuddin @ Rahimuddin S/O Sarfuddin R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 5. Nijamuddin S/O Late Rafique R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 6. Amirullah S/O Sk. Jainul R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 7. Sk. Bachu S/O Late Mojid R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 8. Saifullah @ Safaullah S/O Manzoor R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 9. Nek Mohammad S/O Md. Bhikhari R/O Village - Murli, Police Station - Dhaka, District - East Champaran
 10. Iman Ali S/O Late Raool Miya R/O Village - Pachpakhari, Police Station - Dhaka, District - East Champaran
 11. Md. Okais Mian S/O Police Miya R/O Village - Rupauliya, Police Station - Dhaka, District - East Champaran
 12. Nandu Paswan S/O Saryug Paswan R/O Village - Hirapatti, Police Station - Dhaka, District - East Champaran
 13. Sabbir S/O Ainul @ Sainul R/O Village - Rupauliya, Police Station - Dhaka, District - East Champaran

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Asoka Jang Bahadur, Mr. Asif Kalim
Mr. Khalid Ahsan

For the Opposite Party : A.P.P.

=====

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

3 01-04-2015 Heard Mr. Asoka Jang Bahadur, learned counsel
appearing on behalf of the petitioners.

This criminal miscellaneous application has been filed



by the petitioners, 13 in number, for quashing the order dated 15.03.2012 in Dhaka (Pachpakari) P.S.Case No. 108 of 2010 passed by the learned Chief Judicial Magistrate, Sikrahna at Motihari whereby cognizance of the offences under Sections 147, 148, 448, 353, 427, 436 and 504 of the Indian Penal Code and under Sections 3 and 4 of the Damage to Public Property Act was taken and summons were issued to the petitioners.

It appears that the FIR was lodged by Sub Inspector of Police of Pachpakari Out Post alleging that unlawful mob consisting of more than 100 to 125 set fire in the police station building. In spite of objection they sprinkled patrol and set fire. Thereafter when the informant took out his pistol, the mob started fleeing away. Out of the said mob, the informant, Choukidar and police constable identified the petitioners. After investigation police submitted charge sheet. On the basis of the materials, charge sheet and case diary, learned Chief Judicial Magistrate took cognizance under the aforesaid sections and summons have been issued.

Learned counsel for the petitioners submits that it is not possible that out of the mob, when it was dark, the informant or the Choukidar or the constable would have identified 17 persons including the petitioners. Therefore, the case filed by the



prosecution is absurd. Secondly, learned counsel submitted that the accused have been named with their parentage full address and age, which also appears absurd. The case has been lodged after delay of 13 hours of the occurrence. Learned counsel further submitted that out of the named accused persons, the police did not find any material or evidence against three persons, therefore, they were not sent up, which clearly indicates that the story alleged by the informant in the FIR is false. According to learned counsel there are only three witnesses i.e. the informant, one constable and one Choukidar and except these three witnesses there is no other witness in support of the case. According to the learned counsel in such occurrence the villagers should have supported the case of the prosecution, as alleged in the FIR.

Learned counsel placed the definition of the Sections under which cognizance has been taken and submitted that those are applicable. In other words, no case is made out under the said Sections, therefore, the prosecution case is liable to be quashed.

Perused the order taking cognizance.

It appears that the court below finding, prima facie case, has taken cognizance against the accused persons noted in column 11 of the charge sheet.

From perusal of the FIR it appears that the petitioners



have been specifically named . It is settled principle of law that at the stage of taking cognizance, the Court is concerned not with proof but with merely strong suspicion that accused has committed offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. The court should apply the full test as to whether the uncontroverted allegation as made in the report of the case, prima facie, establishes the offences or not. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. Now, therefore, in view of the settled proposition of law laid down by the Hon'ble Supreme Court in the case of Aamit Kapoor –v- Ramesh Chander & anr. reported in (2012) 9 Supreme Court Cases 460 and the submissions of the learned counsel that neither it is possible nor it is expected that the petitioners could

have been identified, or that there is delay in filing of the FIR or that the details of the petitioners' parentage and address with age have been made or that three persons have not been sent up, in my opinion, on these grounds the prosecution case cannot be said to be absurd or improbable or it is abuse of the process of the Court or order taking cognizance is liable to be quashed. Likewise, the submission that the three persons have not been sent up, which indicates that the story alleged by the prosecution is false cannot be inferred for the purpose of quashing of the prosecution entirely.

In my opinion, the application has got no merits and thus this application is dismissed.

(Mungeshwar Sahoo, J)

singh/-

U			
---	--	--	--