

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38807 of 2012

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1. Jawahir Choudhary
2. Suresh Choudhary Both sons of Late Jamuna Choudhary
3. Parash Choudhary
4. Lalu Choudhary
5. Haresh Choudhary
All sons of Suresh Choudhary, Residents Of Village Khalganon, P.O. &
P.S. Kateya, District Gopalganj.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Tufani Baitha S/O Magister Baitha Resident Of Village Khalganon, P.O.
& P.S. Kateya, District Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vikas Ratan Bharti

For the Opposite Party/s : Mr. Dr.Indiwar Kumari(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

6 01-04-2015 Heard the learned counsel, Mr. Vikas Ratan Bharti on
behalf of the petitioners and the learned A.P.P. for the State.

This criminal miscellaneous application under
Section 482 Cr.P.C. has been filed by the petitioners for quashing
the order dated 06.09.2012 passed by the learned C.J.M.,
Gopalganj in Kateya P.S. Case No.8 of 2011 whereby the learned
Magistrate has taken cognizance against the petitioners for offence
under Section 302/34 of I.P.C. and 3(2)(v) of the Scheduled Castes
and Scheduled Tribes Act.

It appears that the F.I.R. was lodged by the informant



namely Tufani Baitha alleging that these petitioners administered poison to the deceased namely Sudharshan Baitha, as a result of which, Sudharshan Baitha died. After investigation, the police finding the case to be true filed the charge sheet making the petitioners accused in the case. On the basis of the materials and the case diary, the learned Magistrate has taken cognizance on 06.09.2012 as stated earlier.

The learned counsel for the petitioners submitted that there is inconsistent case of the prosecution regarding administration of poison to the deceased. According to the informant, in the present case, the petitioners administered poison to the deceased whereas according to the widow of the deceased, the informant of this case and others Patidar of the deceased had administered the poison. The learned counsel further submitted that in fact, the parties have compromised and a compromise application has also been filed wherein the informant has clearly stated that without knowing the true fact only on suspicion, the informant has lodged the F.I.R. against the petitioners but now he is not desirous of prosecuting the criminal case against the petitioners, therefore, on these grounds, the cognizance order should be quashed.

On the other hand, the learned A.P.P. appearing on



behalf of the State of Bihar-O.P. No.1 submitted that it is not a case that on the allegation made in the F.I.R., no offence is disclosed. The submission of the learned counsel for the petitioners that case filed by the prosecution is improbable has got no meaning at this stage because after investigation, the police has filed the charge sheet and on the basis of the material, the court below has taken the cognizance. The learned A.P.P. further submitted that the cognizance has been taken after the filing of the compromise application and moreover, the offence under Section 302 I.P.C. is not compoundable. The learned A.P.P. further submitted that F.S.L. report has been received wherein the reason for death has been said to be thymate.

Perused the order passed by the court below. It appears that F.S.L. report was called for. Perused the case diary also. At paragraph 44 of the case diary, report reveals that thymate was detected in the dark brown fluid which was sent for the F.S.L. examination.

Hon'ble Supreme Court in the case of **Gian Singh v. State of Punjab & another, (2012) 10 Supreme Court Cases 303** has held that "heinous and serious offences of mental depravity, murder, rape, dacoity, etc., or under special statutes like Prevention of Corruption Act or offences committed by public

servants while working in their capacity as public servants, cannot be quashed even though victim or victim's family and offender have settled the dispute." In the present case, on the basis of the fact that the parties have compromised the proceeding or the order taking cognizance cannot be quashed.

So far the submission that the prosecution case itself is improbable or that there are two versions is concerned, it is a matter to be considered at the time of trial of the case by the trial court. While sitting in exercise of inherent jurisdiction under Section 482 Cr.P.C., this Court cannot meticulously examine the evidences and say that the prosecution story is improbable and cannot be relied upon.

In view of the fact that the allegation has been found true and the death has been caused because of administration of poison, at this stage, in my opinion, the impugned order cannot be quashed.

Accordingly, I find no merit in this criminal miscellaneous application, as such, it is dismissed. The petitioners may, if so advised and if law permits, raise these grounds at the appropriate stage.

(Mungeshwar Sahoo, J)

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