

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11569 of 2013

Arising Out of PS.Case No. -51 Year- 2008 Thana -SONEPUR District- -

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1. Anil Rai @ Anil Kumar Rai, S/O Sipahi Rai, R/O Village- Alipur Saidpur, P.S.- Sonepur, District- Saran At Chapra.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 07-05-2015 Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. This application has been filed under Section 482 Cr.P.C. for quashing the order dated 02.08.2012/30.08.2012 passed by C.J.M., Saran at Chapra in U.T. 282 of 2012, S.P.N. 798 of 2012 arising out of Sonepur P.S. Case No.51 of 2008 whereby the court below has taken cognizance for offence under Sections 302/34 I.P.C. and 25(1-b)A/27 of the Arms Act.

3. The allegation is that the accused persons including the petitioner made indiscriminate firing on the deceased as a result of which the deceased died after receiving gunshot injury.

4. Learned counsel for the petitioner submitted that the prosecution case is improbable because ten accused persons have

been named including all the family members of the present petitioner. The allegation is that they all made indiscriminate firing but in the post-mortem report the doctor found only one gunshot injury. There is no positive evidence to the effect that the gunshot injury was caused by firing of the present petitioner.

5. Perused the F.I.R. and the impugned order. It appears that the petitioner is named in the F.I.R. and the allegation against the petitioner is also that he was making indiscriminate firing. So far the submission of the learned counsel that ten persons were making indiscriminate firing but only one gunshot injury was found on the person of the deceased is concerned, it may be stated that it is not the prosecution case that the deceased received many gunshot injuries but the allegation is that the petitioner was also firing by firearms. So far the submission that all the family members of the petitioner have been made accused is concerned, in my opinion, it is not a ground for quashing the order. In the present case, the F.I.R. itself clearly shows prima facie case that offence has been disclosed. It is settled principles of law as has been held by Hon'ble Supreme Court in the case of **Rishipal Singh Vs. State of Uttar Pradesh and another, (2014) 7 Supreme Court Cases 215** that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is

as to whether the uncontroverted allegations as made in the complaint prima facie establish the case, and High Court should not convert itself into a trial court and dwell into disputed questions of fact. Under Section 482 Cr.P.C. the High Court cannot investigate the disputed questions of fact and decide the same like a trial court. Now in the present case, the F.I.R. clearly discloses prima facie commission of an offence. Admittedly the deceased died because of the gunshot injury. Section 34 I.P.C. is added and, therefore, on the ground that only one gunshot injury has been found on the person of the deceased, the cognizance order cannot be quashed in exercise of inherent jurisdiction under Section 482 Cr.P.C.

6. In the result, I find no merit in this criminal miscellaneous application and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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