

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11325 of 2013

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Awadhesh Kumar Mishra S/O Late Nawal Kishore Mishra, resident of
Village- Serpania, P.S.- Dhaka, District- East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Hem Narayan Singh S/O Late Munshi Singh, resident of Village- Andaul,
P.S.- Baruraj, District- Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prem Kumar Jha, Advocate Mr. Rajesh Kumar Jha, Advocate
For the State	:	Mr. Ajay Kumar -1, Addl.P.P.
For the Opp.Party No.2	:	Mr. Yogendra Kumar Singh, Advocate Dr. Gajendra Prasad Singh, Advocate Ms. Nitu Kumari, Advocate Mr. Ratneshwar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 30.07.2015

Heard the parties.

2. The petitioner, who is a Police Officer, has filed the present application under Section 482 of the Code of Criminal Procedure, 1973 (in short, "Cr.P.C.") for quashing the order dated 11.11.2011 passed in Baruraj P.S. Case No. 101 of 2002 dated 29.10.2002 giving rise Tr. No.2319 of 2011 by learned Sub Divisional Judicial Magistrate, West, Muzaffarpur, whereby cognizance has been taken for an offence under Section 302/34 of the Indian Penal Code against the accused persons including the petitioner and summons have been issued to them for their appearance for the purposes of commitment of the case to the court of sessions. The petitioner is also aggrieved by the order dated 27.11.2012 passed in Cr. Revision No. 27 of 2012 by learned 9th Additional Sessions Judge, Muzaffarpur, whereby the aforesaid revision application filed on behalf of the petitioner against the impugned order taking cognizance

has been dismissed and the impugned order dated 11.11.2011 passed by the learned Sub Divisional Judicial Magistrate, West, Muzaffarpur has been affirmed.

3. Learned counsel appearing on behalf of the petitioner submits that the present case is a counter blast of a criminal case lodged by the petitioner against the opposite party no.2 and his other family members including the deceased Birendra Singh besides others. Therefore, according to him, the present case is a false one and on that basis, impugned criminal prosecution of the petitioner and other accused persons is liable to quashed. It is contended by him that on close of investigation, the police submitted final report dated 27.10.2003 (Annexure-2) as a mistake of fact, therefore, learned Magistrate was not justified in disagreeing with the police report and taking cognizance of the offence and summoning the accused persons including the petitioner for their appearance for the purposes of committing the case to the court of sessions. It is also contended that from the examination of the post mortem report of the deceased the manner of occurrence is not corroborated. Therefore, it is pleaded that the impugned order taking cognizance and impugned revisional order affirming the order taking cognizance are liable to be quashed and set aside by this Court.

4. The matter has been contested by the learned Addl.P.P. appearing on behalf of the State of Bihar and learned counsel appearing on behalf of the opposite party no.2, and they have supported the impugned orders.

5. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the submissions made by the learned counsel appearing on behalf of the petitioner are completely misconceived and untenable at this



stage. Admittedly, in the FIR vide Annexure-1 the petitioner is specifically named as an accused and is alleged to be the main assailant of the deceased. Indisputably, at the relevant time, the petitioner was posted and working as the Officer-in-Charge of the police station, where criminal case was lodged by the opposite party no.2. The learned Magistrate has recorded in the impugned order that in different paragraphs of the case diary the witnesses have supported the prosecution version, but on malicious ground final report was submitted by the police as a mistake of fact. It is well settled that merely on the basis of submission of final report by the police, the criminal prosecution cannot come to a complete halt and criminal prosecution cannot be closed, particularly, in view of the law laid down by the Hon'ble Apex Court in paragraph 9 in the case of **Gangadhar Janardan Mhatre Vs.The State of Maharashtra [(2004) 7 SCC 768]**. Even if the police submits final report, the learned Magistrate has every right to differ with such report and take cognizance against the accused persons. In the present case, the petitioner and other accused persons are the police officials, therefore, it can safely be presumed that the investigation of the criminal case lodged by the opposite party no.2 was not properly conducted, rather all efforts were made to thwart the criminal prosecution lodged by the opposite party no.2 regarding murder of his son. In the impugned order dated 11.11.2011, the learned Magistrate has given cogent reasons for differing with the final report and for taking cognizance of the offence committed by the petitioner and other accused persons. Admittedly, the petitioner challenged the impugned order taking cognizance before the learned Sessions court in Cr. Revision No. 27 of 2012 which has been dismissed by the impugned revisional order dated 27.11.2012. This Court is further of the opinion that at this stage



merely by referring to the statements of some of the witnesses recorded under Section 161 Cr.P.C., the petitioner cannot be permitted to challenge the criminal prosecution by taking a plea that there are contradictions in the prosecution case. In fact, on the misconceived notion of law, the learned counsel appearing on behalf of the petitioner has argued the present matter, as if he was arguing a regular Criminal Appeal after conviction of the petitioner on the basis of criminal charge. That stage is yet to come. For the purposes of taking cognizance, only a prima facie case is required to be there.

6. On the face of it, the present case filed in the garb of Section 482 Cr.P.C. is, in fact, second revision application in the same subject matter on behalf of the same person. In the FIR lodged by the opposite party no.2 vide Annexure-1 giving rise to Baruraj P.S. Case No. 101 of 2002 dated 29.10.2002 registered under Section 302/34 of the Indian Penal Code, the petitioner is not only named as an accused, rather he is alleged to be the main assailant of the deceased. In the aforesaid FIR, there is specific role assigned against the petitioner for commission of crime in question. It appears to be a glaring case of police excesses resulting into the death of the son of the informant.

7. In view of the findings recorded by the learned Magistrate as also the revisional court below, this Court is satisfied that there are sufficient materials for putting the petitioner as also other accused persons on trial for an offence under Section 302/34 of the Indian Penal Code.

8. For the reasons recorded above, this Court is of the considered opinion that the present application is completely misconceived and untenable. The points, which can be raised either in course of trial or after the judgment of conviction, cannot be permitted to be raised at this stage while assailing the order taking cognizance.

9. In the result, the present application has to fail and is, accordingly, dismissed.

10. The learned court below is directed to proceed further expeditiously in the matter in accordance with law.

(Birendra Prasad Verma, J)

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