

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23379 of 2016

Arising Out of PS.Case No. -67 Year- 2015 Thana -JALALGARH District- PURNIA

1. BIPIN KUMAR THAKUR @ BIPIN THAKUR S/o Late Upendra Prasad Thakur resident of At + P.O. Surihari, P.S. Amarpur, District - Banka

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vikas Mohan

For the Opposite Party/s : Mr. Satyendra Narayan Singh(App)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 20-09-2016 Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor.

The learned counsel for the petitioner has submitted that there happens to be delay in instituting the case at the end of the informant and for that, no reasonable explanation has been furnished. In likewise manner, it has also been submitted that dispute was in between daily wages employees as well as informant whereunder presence of petitioner was not at all expected. He has been implicated at the instance of his enemy taking the informant in his collusion.

Furthermore, it has also been submitted that after concluding investigation, petitioner alongwith some others were not sent up for trial and on account thereof, the learned lower court should not have taken cognizance.

Learned Additional Public Prosecutor opposes the prayer and submitted that from the order impugned it is evident that learned Magistrate after perusal of case diary found sufficient materials to summon the petitioner

and others, hence needs no interference.

The order of cognizance dated 22.09.2015 passed by learned C.J.M., Purnea, in Jalalgarh P.S. Case No. 67 of 2015 in which came up under consideration is an order having been passed in terms of Section 190 of the Cr.P.C. At that very moment, it is not needless to say that the Magistrate has got power either to accept to police report, to differ therefrom, and further to direct for reinvestigation. The present exercise having been adopted by the learned Magistrate, by way of differing the ultimate conclusion having arrived at by the Investigating Officer to the extent of, petitioner along with some other persons who were not sent up for trial and for that, as the order impugned suggests, the learned lower court had gone through the case diary and perceived relevant materials and to substantiate the same, referred relevant paragraphs, which has not been controverted by the petitioner.

In ***AIR 1992 SC 604 (State of Hariyana & Ors. Versus Bhajan Lal & Ors)***, the Hon'ble Apex Court has identified the following criteria for quashing of the order of the cognizance or prosecution which still commands the field. For better appreciation the same is quoted below:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section

156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite

*him due to private and personal
grudge.”*

Plea come of the petitioner does not satisfy any of the ingredient as referred above. The submission having been made on behalf of the petitioner that no specific allegation has been attributed at the end of the informant against the petitioner happens to be misnomer in the background of the fact that in terms of Section 34 as well as Section 149 of the IPC, vicarious liability is being perceived, when a member, who shares common intention or common object along with others at the time of commission of occurrence. Presence of petitioner alongwith others including the main accused Sadanand Jha, during course of preventing the informant to proceed in side his office to perform his official duty. Furthermore while Sadanand Jha as well as Vijay Yadav have assaulted the informant, petitioner alongwith other constituted member of an unlawful assembly, by way of active participation whereunder the informant was made captive for quite long time, ultimately disgrace the submission having been made on behalf of the petitioner. With regard to others points having been raised on behalf of the petitioner, the same happens to be the matter of trial.

That being so, the order needs no interference consequent there upon, the instant petition is rejected.

(Aditya Kumar Trivedi, J)

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