

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.32952 of 2013**

Arising Out of PS.Case No. -201 Year- 1999 Thana -NALANDA COMPLAINT CASE District-  
NALANDA (BIHARSHARIFF)

- =====
1. Jagdish Prasad
  2. Indradeo Prasad
  3. Sukhdeo Prasad
  4. Heera Prasad

All sons of Late Khoshi Mahto, resident of village- Sahpur, P.S.  
Rahui, District- Nalanda

.... .... Petitioner

Versus

1. The State of Bihar
2. Mahendra Prasad S/O Mr. Keshar Mahto, resident of Village- Shahpur,  
P.S- Rahui, District- Nalanda.

.... .... Opposite Parties

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**Appearance :**

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.  
Mr. Imteyaz Ahmad, Adv.  
Mr. Ravi Ranjan, Adv.

For the Opposite Party/s : Mr. C.Sen.Pd.Singh A.P.P.  
Mr. Rajendra Prasad Singh, Adv.  
Mr. Pramod Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**  
**ORAL ORDER**

4      09-05-2016                      Heard Sri Ajay Kumar Thakur, learned counsel,  
  
who was assisted by Sri Ravi Ranjan, learned counsel for the  
  
petitioners, Sri Chandrasen Prasad Singh, learned Addl. Public  
  
Prosecutor as well as Sri Pramod Kumar , learned counsel, who  
  
has appeared on behalf of the complainant/Opp.Party no.2.

2.    Four petitioners have approached this Court  
  
invoking its inherent jurisdiction under Section 482 of the Code of  
  
Criminal Procedure with a prayer to quash an order dated



23.05.2013 passed by the learned Adhoc Additional District Judge-I, Biharsharif , Nalanda in Sessions Trial no.582 of 2007. By the said order, the learned court below has rejected the petition filed for discharge under Section 227 of the Code of Criminal Procedure in a case for offence under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. Short fact of the case is that on an allegation of murder of grand-father of Complainant/Opp.Party no.2, an F.I.R. vide Rahui P.S. Case no.23/97 was lodged against the petitioners and one another for offence under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. However, during investigation, the case was found false and, as such, the police submitted final report exonerating the F.I.R. named accused and also recommended for prosecuting the informant for offence under Sections 182/211 of the Indian Penal Code. Subsequently as per direction of the Superintendent of Police, one another F.I.R. was lodged vide Rahui P.S. Case No. 222 of 1997 against the informant of the first case i.e. Rahui P.S. Case no.23/97 and others.

4. In the meanwhile, after submission of final report, the informant of the present case filed a protest petition and the protest petition was treated as complaint petition. After



conducting enquiry in the said complaint case i.e. Complaint Case no.201C /1999, the learned Magistrate took cognizance of offence under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The petitioners, thereafter, approached this Court, invoking its inherent jurisdiction, assailing the order of cognizance. However, this Court after noticing the fact that the informant of the present case was already chargesheeted in Rahui P.S. Case no.222/1997 and trial against the informant of the present case and others was already going on, this Court rejected the quashing application i.e. Cr.Misc.No.24627 of 2000. However, it was directed that the concerned trial court may stay the trial in Complaint Case till final Judgment by the court of Sessions in Sessions Trial no.600/98.

5. It is a fact that the informant of the present case along with others were chargesheeted in Rahui P.S. Case no.222/1997 for murder of his grand-father, namely, Karu Mahto, regarding whose murder, petitioners were made accused in Rahui P.S. Case no.23/97. After submission of chargesheet, the case of the informant and others in Rahui P.S. Case no.222/1997 was committed to the court of Sessions and Sessions Trial was registered as Sessions Trial no.600/98, in which finally, the informant along with other three accused persons were held guilty

and sentenced for imprisonment of life by Judgment and Sentence dated 13.12.2006 and 18.12.2006 respectively.

6. In view of aforesaid facts, learned counsel for the petitioners submits that once in a full-fledged trial, a set of accused, which includes the informant of the present case, have already been held guilty and sentenced for life imprisonment, certainly allowing further proceeding in Complaint Case no.201C/99, corresponding to Sessions Trial no.582/2007, will amount to abuse of process of law. Sri Ajay Kumar Thakur, learned counsel for the petitioners submits that after the case was committed to the court of Session in Complaint Case no.201C/1999 and the informant along with other three accused persons were held guilty in Sessions Trial no.600/98, a petition was filed giving detailed under Section 227 of the Code of Criminal Procedure for discharge of the petitioners, which has been rejected by the learned Sessions Judge by the impugned order i.e. order dated 23.05.2013. In sum and substance, it has been argued that in one case two distinct set of case may not proceed.

7. Sri Pramod Kumar, learned counsel for the complainant/Opp.Party no.2 has vehemently opposed the prayer of the petitioners. He submits that the police was completely



instrumental in implicating the informant i.e. Opp.Party no.2 and other family members. He submits that the informant has lost his grand-father and in relation to his death, the petitioners have been made accused exonerating the main accused persons, who are none else but the petitioners of the present case. He further submits that after the Judgment and Sentence passed in Sessions Trial no. 600/98 the informant and other accused persons have preferred an appeal vide Cr.Appeal no.17/2007. Sri Pramod Kumar, learned counsel for the complainant/Opp.Party submits that this Court, while admitting the appeal after examining the record, had observed that without any plausible evidence, the accused persons in Sessions Trial no.600/98 have been held guilty. Sri Pramod Kumar, learned counsel for the complainant/Opp.Party no.2 has also argued that the charge against the accused can be framed even if there is strong suspicion against the accused persons.

8. Be that as it may, at least in relation to murder of Karu Mahto , the informant and other accused persons have already been held guilty by the court of competent jurisdiction and they have been sentenced to undergo life imprisonment. Though appeal has been filed, which is pending before this Court, the Court is of the opinion that once for murder of one Karu Mahto , a

set of accused, which includes the Opp.Party no.2/ complainant, have already been sentenced for life imprisonment, certainly allowing Sessions Trial no.582/2007 arising out of Complaint Case no.201C/99 will amount to abuse of process of law and , as such, to prevent abuse of process of law, it is necessary to interfere with the impugned order.

9. So far the submission made by learned counsel for Opp.Party no.2 regarding framing of charge even in a case of strong suspicion is concerned, the Court is in agreement with the submission, but at the same time, even in case of murder of one person, if a set of accused, which includes informant of the present case have already been convicted and sentenced, certainly allowing the prosecution of other side in relation of murder of same person that too on protest-cum- complaint case will amount to abuse of process of law, which is not permissible.

10. Accordingly, the order 23.05.2013 passed in Sessions Trial no.582 /2007 is hereby set aside. The petition stands allowed.

**(Rakesh Kumar, J)**

NKS/-

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