

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33236 of 2016

Arising Out of PS.Case No. -18 Year- 2001 Thana -ARA NAGAR District- BHOJPUR

1. Bijay Rai son of Late Jai Ram Rai
2. Jwala Rai Son of Late Shivji Rai
3. Jitendra Rai Son of Late Parmanand Rai all are resident of village -
Gyanpur, P.S.-Koilwar, District- Bhojpur at Ara (Bihar) At Present
Residing at Village- Dharahara , P.S. - Ara Town, District- Bhojpur at Ara
(Bihar)

.... Petitioners

Versus

1. The State of Bihar
2. Manoj Kumar Son of Late Sachchidanand Singh resident of Mohalla-
Mahajan Toli No. 1, P.S. - Ara Town District-Bhojpur (Bihar)

.... Opposite Parties

Appearance :

For the Petitioners : Mr. Yogesh Chandra Verma, Sr. Advocate.
Mr. Manoj Kumar, Advocate.

For the Opposite Parties: Mr. Sri Ganesh Prasad Singh

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 30-08-2016 Heard Mr. Yogesh Chandra Verma, learned senior
counsel duly assisted by Mr. Manoj Kumar, learned counsel for
the petitioners and the learned APP for the State.

The petitioners have filed this petition under Section
482 of the Code of Criminal Procedure for quashing the order
dated 18.09.2010 passed in Complaint Case No. 781(C) of 2010,
by which learned Judicial Magistrate, Ara after enquiry under
Section 202 Cr.P.C. found *prima facie* case to proceed against the
petitioners under Sections 302 and 34 of the Indian Penal Code
and Section 27 of the Arms Act.



The brief facts which are relevant for disposal of this case are that Manoj Kumar, the complainant lodged Ara (Town) P.S. Case No. 18 of 2001 under Sections 324, 302 and 34 of the Indian Penal Code and Section 27 of the Arms Act alleging therein that his uncle Lal Babu Singh was doing accounts work in brick kiln. Ajay Rai, Bijay Rai, Jitendra Rai, Parmanand Rai and Jwala Rai came there and began to talk for purchasing bricks. The informant was also inside the brick kiln. The informant saw the accused persons firing and his uncle fell down on the ground. Bijay Rai fired at the chest of the uncle of the informant and uncle of the informant died on the spot. The labourers came but the accused persons fled away towards national highway.

The police took up investigation and after completion of investigation police submitted final form finding the case false against the petitioners but during course of investigation the informant filed protest petition. After submission of final form, learned Judicial Magistrate, Ara accepted the final form and the case proceeded on protest. During course of enquiry the complainant was examined on S.A. and the complainant examined three witnesses namely Nawal Kishore Singh, Lallan Singh and Sri Ram Singh. The learned Judicial Magistrate, Ara after sifting of evidence collected during course of enquiry, found *prima facie*

case under Section 302 and 34 of the Indian Penal Code and Section 27 of the Arms Act to proceed against the accused persons and directed the complainant to file requisites for issuance of process against the accused persons vide order dated 18.09.2010.

The petitioners assailed the order dated 18.09.2010 in the year 2016, *inter alia* on the ground that the learned Judicial Magistrate, Ara have not applied his mind because the police submitted final form after thorough investigation. The learned Judicial Magistrate, Ara should have taken into account the materials collected during course of investigation. It is further submitted that in the protest petition the complainant has not given parentage of the witnesses and there appears no sufficient material to proceed against the accused persons.

On perusal of the order itself, I find no force in submissions of learned counsel for the petitioners. On this ground alone that after acceptance of final form the case proceeded on complaint and the learned Judicial Magistrate, Ara not at all legally authorize to look into the materials collected by police during course of investigation. The learned Judicial Magistrate, Ara after holding enquiry under Section 202 Cr.P.C. is only to look into materials collected during course of enquiry and the order itself reveals that learned Judicial Magistrate, Ara has

discussed the evidence of the complainant and his three witnesses.

The witnesses have invariably stated that the accused persons having conspiracy with each other killed the uncle of the informant.

Considering the facts aforesaid, I do not find any illegality in the order dated 18.09.2010 passed by learned Judicial Magistrate, Ara in Complaint Case No. 781(C) of 2010. Accordingly, the quashing petition is dismissed.

However, any observations made in the case shall not prejudice the case of either party.

(Prabhat Kumar Jha, J.)

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