

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21425 of 2013

Arising Out of PS.Case No. -68 Year- 2001 Thana -NAWADA District- NAWADA

Sri Narayan Pandey S/O Late Nand Kishore Pandey, Resident of Mohalla- Devi Asthan, Par Nawada, P.S.- Nawada, District- Nawada

.... Petitioner

Versus

1. The State of Bihar
2. Gopi Choudhary, son of Late Brihaspati Choudhary, resident of Mohalla- Par Nawada, Police Station-Town Nawada, District-Nawada

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Sinha, Adv.

For the Opposite Party/s : Mr. Sadanand Paswan, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 02-09-2016

Heard Sri Sanjay Kumar Sinha, learned counsel for the petitioner and Sri Sadanand Paswan , learned Special Prosecutor for the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act. Despite valid service of notice, Opp.Party no.2 has preferred not to appear.

2. The sole petitioner has approached this court invoking its inherent jurisdiction under section 482 of the Code of Criminal Procedure with a prayer to quash an order dated 28.2.2013 passed by learned Special Judge –cum- Additional Sessions Judge 1st Nawada in Special (H) Case No. 67 of 2011 arising out of Nawada (Bundelkhand) Town P.S. Case No. 68 of 2001 registered for the



offence under sections 307/ 504/ 34 of the Indian Penal Code, Section 3 (X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and Section 3 /4 of the Explosive Substances Act. By the said order the learned Special Judge has rejected the petition filed on behalf of the petitioner under section 227 of the Cr.P.C. for his discharge.

3. Short fact of the case is that on the basis of written complaint of one Sri Gopi Chaudhary an F.I.R. was lodged vide Nawada (Bundelkhand) Town P.S. Case No. 68 of 2001 for the offence under section 307/ 504/ 34 of the Indian Penal Code, Section 3(X) of the Scheduled Caste Scheduled Tribes (Prevention of Atrocities) Act and Section 3 / 4 of the Explosive Substance Act. It was alleged by the informant that on 25.3.2001 in the night while he was sleeping in the boring cabin, some persons arrived and lobbed bomb. The informant alleged that he had identified the petitioner, namely, Sri Narayan Pandey however the informant had received no injury.

4. It is a peculiar case in which though F.I.R. was lodged in the year 2001 mainly for the offence under section 3 /4 of the Explosive Substance Act besides other provisions but to the reasons best known to the investigating officer for about nine years no investigation was conducted. It was submitted by learned counsel for



the petitioner that after recording F.I.R. even place of occurrence was not immediately visited by the investigating officer and for nine years there was complete silence. After nine years investigation started and thereafter re-statement of the informant was got recorded. After such a long time some other witnesses were got examined by the police and a case was made out against the petitioner and charge sheet was submitted. In this case, charge sheet was submitted in the year 2011 vide Charge Sheet No. 115 of 2011 dated 31.3.2011 for offence under section 447/ 504 / 34 of the Indian Penal Code section 3(i)(x) of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act and Section 3 / 4 of the Explosive Substance Act.

5. At the stage of charge, the petition was filed for discharge primarily on the ground that initiation of the prosecution on the basis of no material amounts to abuse of the process of the Court. However, by the impugned order, discharge petition of the petitioner was rejected.

6. Learned counsel for the petitioner emphatically argued that if there was an allegation that the petitioner had lobbed bomb immediately thereafter it was mandatorily required for the Investigating Officer to visit the place of occurrence and to see the sign of bomb. However, in the case diary, it has been disclosed that the investigation started in the year 2010, whereas F.I.R. was lodged

in the year 2001 and during investigation, the Investigating Officer himself has recorded that after such a long time, sign of bomb at the alleged place of occurrence was not found. The Court is of the opinion that in such cases, in which investigation started after lapse of more than ten years that too no sign was found regarding using of bomb, allowing prosecution of the petitioner will amount to allowing abuse of the process of the Court.

7. Accordingly, the order dated 28.02.2013 passed by learned Special Judge-cum- Addl. Sessions Judge 1st , Nawada in Spl.(H)67/2011 arising out of Nawada (Bundelkhand) Town P.S. Case No.68/2001 is hereby set aside and the petitioner is discharged from the criminal proceeding.

8. The petition stands allowed.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
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