

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 51117 of 2013

Arising Out of PS.Case No. -231 Year- 2004 Thana -BAKHTIYARPUR District- PATNA

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1. Santosh Singh @ Santosh Kumar S/O Bindeshwari Singh.
 2. Chote Singh @ Chote Lal Singh @ Surendra Singh.
 3. Upendra Singh
Both S/O Late Shyam Narayan Singh.
 4. Sharawan Singh S/O Chote Lal Singh.
 5. Lavkush Singh @ Lavkush Kumar S/O Upendra Singh
All resident of Village- Narauli, P.S- Bakhtiyarpur, District- Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Birendra Kumar Singh S/O Late Kamala Singh, Resident of Village- Narauli,
P.S- Bhaktiyarpur, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Bauye Jee Jha, Adv.

For the Opposite Party/s : Mr. Ashok Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 15-09-2016

Heard Sri Bauye Jee Jha, learned counsel for petitioners and Sri Ashok Kumar, learned Addl. Public Prosecutor. Despite the fact that informant/complainant has entered appearance through his counsel, at the time of hearing, none appeared on behalf of opposite party no. 2.

2. Five petitioners have approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C."), with a prayer to quash an order dated 01-10-2013 passed in Cr. Revision No. 337 of 2011 by the learned Adhoc Additional Sessions Judge 1st, Barh (hereinafter referred



to as 'Addl. Sessions Judge'). By the said order, the learned Addl. Sessions Judge has allowed the petition filed on behalf of opposite party no. 2/informant/complainant, which was preferred against the order dated 03-02-2011 passed by learned Additional Chief Judicial Magistrate, Barh (hereinafter referred to as 'Magistrate'). The learned Addl. Sessions Judge, while setting aside the order of the learned Magistrate, has directed to remit back the matter to the learned Magistrate for passing order afresh.

3. Short fact of the case is that initially opposite party no. 2 had filed a complaint petition before learned Addl. Chief Judicial Magistrate, Barh (Patna), which was referred to the concerned police station for registration of F.I.R. and investigation under Section 156(3) of the Cr.P.C. and thereafter, the present F.I.R. i.e. Bakhtiyarpur P.S. Case No. 231 of 2004 was registered on 07-10-2004 for the offence under Sections 147, 148, 149, 323, 307, 341, 379, 448, 452 & 504 of the Indian Penal Code. In the complaint petition, it was alleged by the complainant/informant that on 05-08-2004 in the morning, while grand son of the informant namely Prince Kumar was playing, the accused persons arrived with lethal weapons and assaulted Prince Kumar by fists and slaps. It was alleged that the accused persons pressed the chest of Prince Kumar with intent to kill and also pressed the neck of Prince Kumar. The offence alleged had taken place on 05-08-2004 at 8:00 A.M. and complaint was filed before the learned Magistrate on 21-08-2004. Thereafter, F.I.R. was lodged. Police after



registering F.I.R. thoroughly investigated the case and finally submitted chargesheet for the offence under Sections 147, 447, 341, 323, 504 of the Indian Penal Code. After submission of chargesheet, the learned Magistrate took cognizance of offences, as per chargesheet and finally, trial proceeded. After much belated stage i.e. in the year 2011, petitions, which were filed in the year 2008, were pressed by the prosecution side. The petition was for adding Section 307 and 379 of the Indian Penal Code and also to commit the case to the court of sessions, a petition was filed under Section 323 of the Cr.P.C. on the ground that during trial, material was collected to suggest commission of offence i.e. offence under Section 307 of the I.P.C., which was triable by the court of sessions. The petition filed on behalf of prosecution was considered by the learned Magistrate and by a reasoned order i.e. order dated 03-02-2011, the learned Magistrate rejected the petition filed on behalf of prosecution. The said order was assailed by the informant by filing a revision petition, vide Cr. Revision No. 337 of 2011, which was finally allowed by the learned Addl. Sessions Judge, Barh by the impugned order i.e. order dated 01-10-2013. The said order has been assailed in the present proceeding.

4. Learned counsel for petitioners, assailing the impugned order, has firstly argued that in a trivial issue, after much belated stage from the alleged date of occurrence i.e. 05-08-2004, the complaint before the learned Addl. Chief Judicial Magistrate was filed on 21-08-2004 with exaggerated allegation of commission of offence



under Sections 307 as well as 379 of the Indian Penal Code. He submits that the complaint filed by the complainant/informant was referred to the police and police thereafter as per complaint petition registered F.I.R., vide Bakhtirapur P.S. Case No. 231 of 2004 for offences under Sections 147, 148, 149, 323, 307, 341, 379, 448, 452, 504 of the Indian Penal Code. However, during investigation, allegation in respect of offence under Section 307 of the Indian Penal Code, which was only triable by the court of session, was found not true and finally, police submitted chargesheet for offences under Sections 147, 447, 341, 323, 504 of the Indian Penal Code, which were triable by the court of learned Magistrate. After submission of chargesheet, the learned Magistrate took cognizance for the offence as per the chargesheet. At the time of cognizance, no objection was raised by the informant. Subsequently, trial commenced and during the trial, even though, no sufficient materials were brought on record to suggest commission of offence under Section 307 or 379 of the Indian Penal Code, a petition was filed on behalf of prosecution for adding Sections 307 and 379 of the I.P.C. and also a petition was filed in the year 2008 under Section 323 of the Cr.P.C. for committing the case to the court of sessions, since the offence, as alleged by the prosecution, was triable by the court of sessions. He further submits that such petition was filed in the year 2008, but to the reasons best known to the informant or prosecution, the said petition was not pressed, however at much belated stage in the year 2011, said petitions were pressed, whereas, the learned



Magistrate, after examining entire evidence which were brought on record till the date of passing of the order, passed a detailed order and rejected the petition filed on behalf of prosecution. Learned counsel for petitioners submits that had there been any intention to kill the victim, there was no restriction to the petitioners, since as per evidence of P.W. 1, P.W. 2 and P.W. 3, accused persons were carrying lethal weapons, whereas, in entire F.I.R. or investigation, nothing has been indicated regarding use of such weapons. Even as per evidence, which were brought on record by the prosecution, there was no material to suggest that there was any intention on the part of the petitioners to kill the victim. He submits that this was the reason that the learned Magistrate by a detailed order had rejected the petition filed on behalf of prosecution, however; the learned revisional court, while exercising revisional jurisdiction, has acted as if he was exercising appellate jurisdiction and passed the impugned order, which is required to be interfered with. He submits that in any event for such an offence, the petitioners have already been prosecuted for such a long time. As per learned counsel for petitioners, the alleged occurrence had taken place in the year 2004 and in the year 2011, only and only with a view to delay the conclusion of the trial, petitions were filed by the prosecution, which were rejected and thereafter, revisional court has passed the impugned order. According to learned counsel for petitioners, order of revisional court is liable to be set aside.

5. Learned Addl. Public Prosecutor though has opposed

the prayer of petitioners, but he is in agreement with the submission of learned counsel for petitioners that under Section 323 of the Cr.P.C., only if sufficient materials are brought on record showing commission of offence triable by the court of sessions, then a Magistrate can exercise its jurisdiction.

6. Besides hearing, I have also perused the materials available on record. On going through the F.I.R., it is evident that without any plausible reason, the complaint was filed belatedly showing commission of incorrect serious sections of the Indian Penal Code, however; during investigation, such allegations were found not true and thereafter, chargesheet was submitted for offences, which were triable by the learned Magistrate and during the trial, four prosecution witnesses were examined. The learned Magistrate, while rejecting the petition filed by the prosecution, had discussed the evidences of P.Ws. 1, 2, 3 and 4. From the record, it is evident that it was alleged that accused persons were having lethal weapons, however; there was no allegation of use of any weapon. Meaning thereby that the learned Magistrate has rightly rejected the petition for adding Section 307 of the I.P.C. Since, there was no material to establish a case under Section 307 of the I.P.C., the learned Magistrate by a detailed order had rejected the petition, however; the learned Addl. Sessions Judge in a revisional jurisdiction has passed an order as if he was exercising jurisdiction of the appellate court.

7. Keeping in view the fact that alleged offence had

taken place long back as well as the fact that during investigation allegation of Sections 307 and 379 of the I.P.C. was not found true and the evidence, which has been referred by the learned Magistrate in its order dated 03-02-2011, the Court is satisfied that the learned Magistrate had rightly rejected the petition filed on behalf of the prosecution for adding either Section 307 or 379 of the Indian Penal Code or to commit the case to the court of session under Section 323 of the Cr.P.C.

8. Accordingly, the order impugned i.e. order dated 01-10-2013 passed in Cr. Revision No. 337 of 2011 by the learned Adhoc Additional Sessions Judge 1st, Barh (Patna) is hereby set aside, with an observation that learned Magistrate, where the trial is pending, may taken step so that the case may come to its logical end without unnecessary delay.

9. The petition stands allowed.

(Rakesh Kumar, J.)

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