

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 15458 of 2016

Arising Out of PS.Case No. -128 Year- 2015 Thana -PARWALPUR District- NALANDA
(BIHARSHARIFF)

- =====
1. Ashutosh Bihari @ Vokal Bihari
 2. Jai Shankar Bihari @ Karu Bihari,
 3. Shambhu Shankar Bihari @ Shambu Bhari, All sl. 1 to 3 sons of Sri Brijnandan Singh,
 4. Braj Nandan Prasad Singh @ Brij Nandan Singh, Son of Late Sheodani Singh,
 5. Sukesh Bihari @ Manish Bihari,
 6. Sudhish Bihari @ Chunchun,
 7. Avinash Kumar @ Munchun Bihari, All sl. 5 to 7 sons of late Suryadeo Singh,
 8. Ankit Bihari @ Ankeet Bihari, Son of Saket Bihari,
 9. Satrugshan Singh @ Sato Singh, Son of Sheodani Singh,
 10. Anand Bihari @ Raju Bihari, Son of Late Umesh Prasad Singh,
 11. Mithilesh Bihari @ Mithilesh Bihari, Son of Late Ramdeo Singh,
 12. Kamlesh Bihari, Son of Late Ramdeo Singh,
- All resident of village - Pilich, P.S. - Parwalpur, District - Nalanda.

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

=====

Appearance :

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

For the Opposite Party/s : Mr. Parmeshwar Mehta, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 27-09-2016

Heard Sri Dilip Kumar Sinha, learned counsel for
petitioners and Sri Parmeshwar Mehta, learned Addl. Public
Prosecutor.

2. Twelve 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 30-01-2016 passed by learned Judicial Magistrate 1st Class, Hilsa,

Nalanda (hereinafter referred to as 'Magistrate') in Parwalpur P.S. Case No. 128 of 2015, G.R. No. 2007 of 2015. By the said order, the learned Magistrate has taken cognizance of offence under Sections 147, 341, 323, 504/34 of the Indian Penal Code.

3. It was submitted by learned counsel for petitioners that it is true that F.I.R. was lodged against 17 accused persons and all the petitioners were named as accused in the F.I.R., however; during investigation, accusation against the petitioners was not found true and chargesheet was submitted only against two accused persons i.e. Bipin Bihari as well as Saket Bihari, who were also named as accused in the F.I.R. Learned counsel for petitioners submits that a completely false case was instituted by the informant, only with a view to harass the petitioners. He submits that some of the petitioners are government employee and posted somewhere else and some of the petitioners are students. By way of referring to F.I.R., he submits that the informant had concocted a case, as if, petitioners were trying to take illegal possession over the government land, which was opposed by the informant and thereafter, he was assaulted by the accused persons. The F.I.R. was lodged for offence under Sections 147, 149, 323, 342, 307 of the Indian Penal Code, however; during investigation, no accusation against the petitioners was found true against fifteen F.I.R. named accused, which includes petitioners. Even the allegation for offence under Section 307 of the Indian Penal Code was not found true



and 15 accused persons, which includes 12 petitioners, were not sent up for trial and were exonerated. Learned counsel for petitioners has taken this Court to **Annexure – 2** to the petition i.e. police report, vide Final Report No. 144/15 dated 15-10-2015. He submits that in column no. 11 of the chargesheet, only two persons were shown as accused, whereas, petitioners were exonerated. It has been argued by learned counsel for petitioners that once petitioners were exonerated by the police and they were not sent up for trial, the learned Magistrate though was competent to pass order of cognizance differing with the police report, but at the same time, he was required to assign some reason(s). He submits that in a mechanical manner, the learned Magistrate has passed order of cognizance and as such, he has made a prayer for setting aside the same.

4. Learned Addl. Public Prosecutor has opposed the prayer. He submits that on the basis of materials on record, order of cognizance has been passed.

5. Besides hearing, I have also perused the material on record, particularly; **Annexure – 1** i.e. copy of F.I.R., **Annexure – 2** i.e. copy of final report as well as the impugned order. It is a fact that petitioners were arrayed as accused in the F.I.R., but once during investigation, by statutory investigating agency, accusation was not found true, the learned Magistrate, at the time of differing with the police report, was required to succinctly assign reason, whereas, on

going through the impugned order, it is evident that no reason has been assigned. The Court is of the opinion that the order impugned is liable to be set aside.

6. Accordingly, the order dated 30-01-2016 passed by the learned Judicial Magistrate 1st Class, Hilsa (Nalanda) in Parwalpur P.S. Case No. 128 of 2015, G.R. No. 2007 of 2015, so far as petitioners are concerned, is hereby set aside.

7. The petition stands allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.09.2016
Transmission Date	30.09.2016