

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18389 of 2016

Arising Out of PS.Case No. -512 Year- 2011 Thana -SAMASTIPUR MUFFASIL District-SAMASTIPUR

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Umesh Rai @ Umesh Kumar @ Umesh Kumar Rai S/o Jagdish Rai, resident of Village- Jitbarpur Nijarmat Kanhaiya Chouk; P.S.- Mufassil Samastipur, District Samastipur.

.... Petitioner

Versus

1. The State of Bihar
2. Manoj Kumar S/o Sri Rejendra Rai; Resident of Village Jitwarpur Hasanpur, P.S. Muffasil, District Samastipur.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Bijay Bhushan Prasad, Advocate
For the State : Mr. Nityanand, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-09-2016

Heard learned counsel for the petitioner and learned counsel for the State.

In the present case, the petitioner is seeking relief for quashing of the order dated 17.2.2016 passed by learned S.D.J.M., Samastipur in Samastipur Town (Muffasil) P.S. Case No.512 of 2011 by which he has taken cognizance against the petitioner for the offences under Sections 147, 148, 149, 447, 448, 341, 323, 302, 504, 120(B) of the Indian Penal Code.

It appears that case and counter case has been lodged by both sides and the counter case shows that there has been death of one Nathu Rai @ Krishna Kuamr Rai. In the present case, the allegation



has been made that on 24.8.2011 after taking dinner they were sleeping in the house, 10-15 persons armed with different weapons came to their house and started assaulting them in different manner, they received injuries. It has been claimed that accused persons were identified. In the statement claimed by the informant that accused persons smashed the head of Nathu Rai @ Krishna Kumar Rai led to his death. The police after investigation submitted charge sheet in which petitioner has not been sent up to face criminal trial bent on the basis of materials collected during investigation, the Court took cognizance.

Learned counsel for the petitioner submits that when there is case and counter case, the police has submitted a final form, in such situation, the order taking cognizance must show the reasons why the Magistrate differed with the opinion of police in arriving to the conclusion of having not sent up for trial. In support of his submission, reliance has been placed in the case of **Ram Nandan Singh @ Ram Nandan Yadav Vs. State of Bihar and another [2007(2) PLJR 825]** and so much so he has submitted that present petitioner was not at place of commission of offence there but he had gone at Panaghar. He has annexed the photo copy of the prescription and railway ticket. At the stage of taking cognizance, the Magistrate has only to see as to whether prima facie case is made out or not, he



cannot go for trial or mini trial, conceiving facts the Magistrate may exercise power in the followings : (i) After the charge sheet, the Magistrate has jurisdiction to examine the investigation has been conducted in a proper manner, in the event negative finding he can ask the police to go for a further investigation, 2nd, the Magistrate can accept the final form. 3rd Magistrate may disagree with the final form and on the basis of material available on record would take cognizance.

The view that has been taken by the Single Bench of this Court cannot be subscribed by in view of subsequent judgment of Hon'ble Supreme Court in **Nupur Talwar Vs. Central Bureau of Investigation, Delhi and another [2012(2) SCC 188]**, **Vasanti Dubey Vs. State of Madhya Pradesh [2012 (2) SCC 731]**, **Uma Shankar Singh Vs. State of Bihar and another [2010(9) SCC 479]** and **Rameshbhai Pandurao Hedau Vs. State of Gujarat [2010(4) SCC 185]** where the Court has held, the Magistrate while taking cognizance the Magistrate has to apply the test of prima facie case. Discussion on the evidence collected by the police would to find out what is error in the ultimate view, will be more than what is required in law. In all the judgments of the Hon'ble Supreme Court, has held that the test of prima facie case is made out or not has to be seen at this stage. The test of strong suspicion would be applicable at the time

of framing of charge, can be substantiated on placing reliance on the judgment in **P. Vijayan Vs. State of Kerala [(2010) 2 SCC 398]**.

In such view of the matter, the Magistrate has applied judicial mind recorded that the petitioner has not been sent up for trial but on perusal of the case diary, he has taken cognizance and rightly he has refused to enter into the area of meticulous examination of evidence recorded by the police, thereby avoided to go for trial or mini trial at the stage of taking cognizance. The defence of the accused will be looked into at the proper stage. This Court does not find sufficient ground to interfere with the order of cognizance.

Accordingly, the same is dismissed.

(Shivaji Pandey, J)

N.H./-

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