

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 21200 of 2013

Arising Out of PS.Case No. -111 Year- 2012 Thana -SAHARSA District- SAHARSA

Manoj Kumar Yadav @ Manoj Yadav S/O Late Harish Chandra Yadav
Resident of Village Hakpara, P.S. Saharsa Sadar, District Saharsa.

.... Petitioner

Versus

- 1. The State of Bihar.
- 2. Sushil Mukhiya S/O Sri Dukhan Mukhiya Resident of Village Hakpara
Tola Gorhiyari, Ward No. 12, P.S. & District Saharsa.

.... Opposite Parties

with

Criminal Miscellaneous No. 43306 of 2013

Arising Out of PS.Case No. -111 Year- 2012 Thana -SAHARSA District- SAHARSA

- 1. Pintu Sah S/O Sri Shankar Sah.
 - 2. Arun Sah S/O Sri Shankar Sah.
 - 3. Md. Shamsher S/O Late Abdul Samad.
 - 4. Md. Firoz S/O Md. Jamun
- All resident of Village Hakpara, P.S. Saharsa Sadar, District Saharsa.

.... Petitioners

Versus

- 1. The State of Bihar.
- 2. Sushil Mukhiya S/O Sri Dukhan Mukhiya Resident of Village Hakpara
Tola Gorhiyari Ward No. 12, P.S. & District Saharsa.

.... Opposite Parties

with

Criminal Miscellaneous No. 46289 of 2013

Arising Out of PS.Case No. -111 Year- 2012 Thana -SAHARSA District- SAHARSA

- 1. Sushil Mukhiya Son of Dukhan Mukhiya.
 - 2. Arvind Mukhiya Son of Dukhan Mukhiya.
 - 3. Yogendra Mukhiya Son of Late Ayodhi Mukhiya.
 - 4. Bablu Mukhiya Son of Yogendra Mukhiya
- All resident of Village- Hakpada, Goriahi, Ward No. 12, Police Station-
Saharsa, District- Saharsa.

.... Petitioners

Versus

- 1. The State of Bihar.
- 2. I.G. Koshi Range, Darbhanga.
- 3. D.I.G. Koshi Range, Saharsa.
- 4. Superintendent of Police, Saharsa.
- 5. Deputy Superintendent of Police, Saharsa.
- 6. Chandan Kumar (S.I.) son of not known Investigating Officer, P.S. and
District- Saharsa.

..... Opposite Parties

Appearance :

(In Cr.Misc. No. 21200 of 2013)

For the Petitioner/s : Mr. Bindhya Keshri Kumar, Sr.Adv.
Mr. Ratan Kumar

For the Opposite Party/s : Mr. Tapeswar Sharma (App)
(In Cr.Misc. No. 43306 of 2013)

For the Petitioner/s : Mr. Bindhya Keshri Kumar
Mr. Ratan Kumar

For the Opposite Party/s : Mr. Pradip Narayan Kumar (App)
(In Cr.Misc. No. 46289 of 2013)

For the Petitioner/s : Mr. Pankaj Kumar Sinha
Md. Harun Quareshi

For the Opposite Party/s : Mrs. Veena Rani Pd.(App)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

11. 15-03-2016

In all the aforesaid three petitions, since common order is under-challenge, all the three petitions were heard together and are being disposed of by this common order.

Heard Sri Bindhya Keshri Kumar, learned senior counsel, who was assisted by Sri Ratan Kumar, learned counsel for petitioners in Cr. Misc. No. 21200 of 2013 & Cr. Misc. No. 43306 of 2013, Sri Pankaj Kumar Sinha, learned counsel who was assisted by Md. Harun Quareshi, learned counsel for petitioners in Cr. Misc. No. 46289 of 2013 and learned Addl. Public Prosecutors. In third case i.e. Cr. Misc. No. 46289 of 2013, learned counsel for petitioners intends to file affidavit. It may be filed in Registry. Office is directed to place it on record, if the same is filed by tomorrow i.e. 16-03-2016.

In first two cases i.e. Cr. Misc. No. 21200 of 2013 & Cr. Misc. No. 43306 of 2013, petitioners were named as accused in the F.I.R. for offences under Section 302 & other allied sections of the Indian Penal Code, whereas, in the third case i.e. Cr. Misc. No. 46289 of 2013, petitioner no. 1 is the informant and others were not named as accused in the F.I.R.

On the basis of *fardebayan* of the petitioner no. 1 of the third case (i.e.Cr. Misc. No. 46289 of 2013), an F.I.R., vide Saharsa (Sadar) P.S. Case No. 111 of 2012 was registered for the offence under Sections 147, 148, 149, 302, 436 of the Indian Penal Code and Section 27 of the Arms Act, 1959 against the petitioners of first two cases (i.e. Cr. Misc. No. 21200 of 2013 & 43306 of 2013). During investigation, certain materials were collected and also some material was collected to show involvement of informant himself and other accused persons who were not named in F.I.R. Thereafter, the police submitted final report exonerating the F.I.R. named accused and the informant and others were forwarded, as accused, by the police. After submission of chargesheet, the learned Chief Judicial Magistrate examined the case diary as well as police report and after referring to number of paragraphs of the case, he was of the opinion that case is made out against both informant and persons not named in F.I.R. as well as

F.I.R. named accused persons and as such, he took cognizance of offences, as stated hereinabove.

In this case, earlier case diary was also called for in the third case (Cr. Misc. No. 46289 of 2013).

Learned Addl. Public Prosecutor after examining the case diary submits that the learned Chief Judicial Magistrate has rightly referred paragraphs of the case diary to show involvement of both informant and other accused persons.

After hearing the parties and considering the impugned order, the Court is of the opinion that there is no error in the order warranting interference.

Accordingly, all the aforesaid three petitions are dismissed, with an indication that petitioners may take all the pleas, which have been taken in the aforesaid petitions, at appropriate stage i.e. at the stage of charge before the court below.

(Rakesh Kumar, J.)

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