

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2402 of 2015

Arising Out of PS.Case No. -46 Year- 2009 Thana -VIDYAPATINAGAR District- SAMASTIPUR

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1. Bijendra Paswan @ Vijendra Paswan S/o Brahmdeo Paswan R/o village -
Khanua, P.S. Vidyapati Nagar, Distt. - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surya Narayan Roy, Advocate

For the Opposite Party/s Mr. Jharkhandi Upadhyaya, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 10-03-2017

Heard both sides.

The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure for quashing the order dated 13.07.2011 passed by the learned Additional Chief Judicial Magistrate, Dalsingsarai in Vidyapati Nagar P.S. case No. 46 of 2009 whereby the learned Magistrate took cognizance under Section 302/34, 120B of the IPC and under Section 27 of the Arms Act against the petitioner, differing with the finding of the Investigating Officer.

On the fard bayan of Pankaj Kumar, Vidyapati Nagar P.S. case No. 46 of 2009 was registered under Section 302/34 of the IPC and under Section 27 of the Arms Act. The informant alleged that



when he and his father, Rajendra Sah, had gone to see his maize field, Bijay Paswan, Bijendra Paswan @ Vijendra Paswan, the petitioner, Raj Kumar @ Khesari Singh, Mithilesh Singh and two unknown persons were taking liquor. When they reached at their filed all the accused persons came and on the order of Raj Kumar @ Khesari Singh, Bijay Paswan and the petitioner, put his father down on the ground and Raj Kumar @ Khesari Singh and Mithilesh Singh fired on different parts of body of his father. His father died on the spot. Many other villagers also saw the accused persons fleeing away from the place of occurrence. The police after investigation found the case true against Raj Kumar @ Khesari Singh and others but at the same time submitted final form finding the case false against the petitioner on the ground of insufficiency of evidence but the learned Additional Chief Judicial Magistrate, after perusing the FIR and case diary, found that there are sufficient materials to take cognizance under Section 302/34, 120B of the IPC and under Section 27 of the Arms Act against the petitioner and others.

The learned counsel for the petitioner submits that the learned Magistrate did not peruse the case diary. The police did not find the case true against the petitioner but from perusal of the impugned order itself, it appears that the learned Additional Chief Judicial Magistrate took cognizance after perusing the case diary and



found that there are sufficient materials on record to take cognizance. Even the informant himself has made very specific allegation against the petitioner that the petitioner and his brother, Vijay Paswan, put the father of the informant on the ground and thereafter Raj Kumar @ Khesari Singh and others fired causing the death of his father on the spot.

Having considered the facts aforesaid, I do not find any illegality in the impugned order. This quashing petition is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

BKS/-

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