

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14316 of 2015

Arising Out of PS.Case No. -86 Year- 2014 Thana -SITAMARHI District- SITAMARHI

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1. Subhash Chandra Jha @ Subhash Jha Son of Sri Ram Balak Jha Resident of Village - Mohanpur, P.S. Piparahi, District Sheohar, at present R/o Mohalla - Kailashpuri, P.S. Dumra, District Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ram Lochan Sharan Gupta Son of Late Jhabbu Prasad Gupta Resident of Sahu Chowk, P.S. & District Sitamarhi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Advocate
For the Opposite Party/s : Mr. J.N. Thakur, (App)
For the O.P. No.2 : Mr. Ashhar Mustafa, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 15-05-2017

Heard learned counsels for the parties.

The present application has been filed for quashing the order dated 30.8.2014 passed by the learned Sessions Judge, Sitamarhi in Cr. Revision No. 57 of 2014, affirming the order dated 9.5.2014 passed by the learned C.J.M., Sitamarhi in Sitamarhi P.S. Case No. 86 of 2014, whereby, the process has been directed to be issued against the petitioner after cognizance being taken for the offences under sections 307 and 120B/34 of the Indian Penal Code and section 27 of the Arms Act. Hence, prayer has been made for quashing the order passed by the learned C.J.M. as well as the Sessions Judge.



The prosecution case is that O.P. No. 2 got his fardbeyan recorded on 30.1.2014, alleging that on the same day at 7.30 P.M. when the informant was sitting at the house of his brother, Shiv Lochan Sharan Gupta, he received information that there has been an incident of firing at his residence where his son Manoj Kuimar received injuries. This fact has been conveyed to the informant by his son Manoj Kumar and nephew Mukesh Kumar. With the said accusation, Sitamarhi P.S. Case No. 86 of 2014 was registered on 30.1.2014 under sections 307/34 and 120B IPC and section 27 of the Arms Act.

On conclusion of investigation, the police submitted final form (chargesheet) under sections 307 and 120B/34 of the Indian Penal Code and section 27 of the Arms Act and consequently, the learned Magistrate, on the basis of police report and the materials on record directed for issuance of process against the petitioner after cognizance being taken for the offences under sections 307 and 120B/34 of the Indian Penal Code and section 27 of the Arms Act.

It is submitted by learned counsel for the petitioner that the informant was not the eye witness to the occurrence and only on suspicion in the background of serious litigation between the parties, the FIR has been registered.



Learned counsel for the informant submits that on finding prima facie case, the learned Magistrate has directed for issuance of process against the petitioner after cognizance being taken for the offences under sections 307 and 120B/34 of the Indian Penal Code and section 27 of the Arms Act.

Considering the rival submission of the parties, in view of this court, at the stage of exercising jurisdiction under Section 190(1)(b) Cr.P.C., the Magistrate has only to see the prima facie case. The only added advantage at this stage to the Magistrate is that he has occasion to go through the police report submitted under section 173 (2) Cr.P.C. which contains the materials collected during investigation. This is not the stage when the Magistrate is supposed to consider the defence of the accused as has been held in the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”



More over, in the present case the order of issuance of process was challenged in revision and the learned Sessions Judge has upheld the order of issuance of process against the petitioner.

Hence, at this stage, this Court is not inclined to interfere. The present quashing application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

Anil/-

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