

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43557 of 2013

Arising Out of PS.Case No. -17 Year- 2009 Thana -KAUAKOL District- NAWADA

- =====
1. Ajit Kumar @ Ajit Yadav Son Of Late Dwarika Yadav Resident Of Village - Lalpur, P.S.- Kauwakol, District- Nawada, Presently Residing At Kuawakol Bazar, P.O. & P.S.- Kauwakol, District - Nawada
 2. Shambhu Yadav Son Of Late Dwarika Yadav Resident Of Village - Lalpur, P.S.- Kauwakol, District- Nawada, Presently Residing At Kuawakol Bazar, P.O. & P.S.- Kauwakol, District - Nawada
 3. Maheshwar Yadav Son Of Dhaneshwar Yadav Resident Of Village - Taraun, P.O. & P.S.- Kauwakol, District - Nawada

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Jitendra Kr. Singh, Sr. Adv.

Mr. Avanish Kumar Singh

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date: 22-09-2017

Heard both the parties.

Petitioners, by means of this application under section 482 of the Cr. P.C., have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 01.05.2010 passed by C.J.M., Nawada in Kauakol P.S. Case No. 17 of 2009, whereby cognizance has been taken against the petitioners for the offences under sections 302, 307, 379, 353, 324, 326 and 120B of the I.P.C., section 27 of Arms Act, section ¾ of the Explosive Substance Act and Section 17 of the C.L.A. Act.



The contention of learned counsel for the petitioners is that no offence against the petitioners is disclosed and the present prosecution has been instituted with *mala fide* intention for the purposes of harassment. Petitioners have been implicated in this case only on suspicion. The Police after investigation, submitted charge sheet against other co-accused persons, except these petitioners finding them to be innocent. However, the learned Magistrate differing with the same, took cognizance against these petitioners.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and no ground for quashing the order taking cognizance is made out.

From perusal of the materials available on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the petitioners. This Court does not find any substance in the submission of the learned counsel for the petitioners. At this stage only *prima facie* case is to be seen. Moreover, the Supreme Court in the judgment reported in *A.I.R. 1968 S.C. 117* has held to the effect that if the Magistrate does not agree with the opinion of the Police contained in the final report, he can take cognizance.



In view of the discussions made above, this Court does not find any error in the order taking cognizance. Therefore, the prayer for quashing the same is refused.

The application, accordingly, stands dismissed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	25.07.2017
Uploading Date	23.09.2017
Transmission Date	23.09.2017

