

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25312 of 2014

Arising Out of PS.Case No. -172 Year- 2008 Thana -PATNA COMPLAINT CASE District-
PATNA

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Rajendra Prasad Singh, Son of Late Ramadhar Ram, Resident of Village-Baligaon,
P.S.-Rajpur, District-Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar
2. Tribhuan Nath Chaudhary Son of Late Ramdyal Chaudhary, R/o Village-Baligaon, P.O.-Rajandih, P.S.-Rajpur, District-Rohtas.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar
For the Opposite Party No. 2	:	Mr. Ajay Kumar Tiwary
For the State	:	Mr. Akhileshwar Dayal

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-06-2017

1. This is an application filed under Section 482 of the Cr.P.C. wherein the petitioner has prayed for quashing the order dated 06.05.2011 passed by the Judicial Magistrate, 1st Class in Complaint Case No. 172 (C) 2008 and also the order dated 26.02.2014 passed by Addl. Sessions Judge X, Patna in Session Trial No. 390 of 2012.
2. Heard both sides.
3. The facts, giving rise to this Cr. Misc. application in brief, is that a police case vide Gardanibagh P.S. Case 507 of 2005 was registered on 15.07.2005 for the offence under Sections 302, 379/34 of the I.P.C. against the petitioner and three others, on the written report of the father of the deceased. After investigation, the police



finding no materials against the petitioner submitted final report on 20.10.2006. The informant having apprehension as regards police investigation filed a protest petition on 13.09.2005 which was registered as complaint case. The informant examined witnesses, in course of inquiry. The learned Magistrate considering the evidence on record found *prima facie* case for the offence under Section 304/34 and 379 of the I.P.C. against the petitioner and three others and ordered for issuance of summons. The complainant filed Cr. Misc. No. 13670 of 2010 before this Court, which after hearing was allowed on 13.12.2010 by one of the co-ordinate Bench of this Court. The court while setting aside the cognizance order observed that in the facts of the case an offence under Section 302 of the I.P.C. is made out. The court below as per observation/direction of this Court re-examined the materials on record and found *prima facie* case under Section 302, 397/34 of the I.P.C. and accordingly took cognizance against this petitioner and three others. After commitment, the petitioner filed a petition under Section 227 of the Cr.P.C. praying therein to discharge them. The Addl. Sessions Judge as per order dated 26.02.2014 rejected the prayer. The petitioner has prayed to quash the said order.

4. The learned counsel for the petitioner submits that there is absolutely no material either against this petitioner or any of the co-



accused. After investigation police finding no materials against the petitioner submitted final form. The learned Magistrate without going through the record, has passed the impugned order taking cognizance. The learned Addl. Sessions Judge has also did not consider the submissions of this petitioner. There was/is absolutely no materials for framing charge and so the impugned order is fit to be quashed.

5. The learned APP as well as counsel for the informant submits that there are abundant materials against the petitioner in the case diary as well as the witnesses have stated about the complicity of the petitioner. This petitioner and other co-accuseds had land dispute with the deceased. They had motive to commit the murder of deceased. There are strong circumstances showing complicity of the petitioner. Besides that, the witnesses have supported the allegation of causing fire arm injury against the accused persons.

6. Perused the impugned order as well as documents on record. This petitioner is named in the F.I.R. with specific allegation that he along with other co-accused hatched conspiracy and committed murder of the deceased. The statement of informant and his sons is recorded as paragraphs 6, 17 and 18 of case diary. At the time of inquiry, as many as five witnesses have stated about the complicity of the petitioner in committing murder of the deceased.



They have stated that the accused persons were adamant to take forceful possession over the land of the informant and one month earlier to the occurrence, they have threatened to do away with the life of the deceased. There are sufficient materials on record for framing charge against the petitioner. The court below has rightly rejected the petition of the petitioner filed under Section 227 of the Cr.P.C.

7. In view of the discussions made above, I do not find any merit in the application which is accordingly, dismissed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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