

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17657 of 2014

Arising Out of PS.Case No. -204 Year- 2012 Thana -NAUBATPUR District- PATNA

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Shailesh Dutt Tiwary @ Guddu Tiwary, s/o late Awadhesh Dutt Tiwary, resident of village Tiwary Chak, P.S. Naubatpur, District Patna, presently residing at M.P. Sinha Road, P.S. Kadam Kuan, Patna-3.

.... Petitioner/s

Versus

1. The State of Bihar
2. Kaushal Kishore Pandey, son of Rajendra Pandey, r/o village Tiwari Chak, P.S. Naubatpur, Distt. Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Chittaranjan Sinha, Sr. Advocate. Mr. Siddhartha Prasad, Advocate. Mr. Chaitanya Swaroop, Advocate. Mr. Surya Nilambari, Advocate.
For the informant	:	Mr. Shashi Shekhar Kr. Prasad, Advocate.
For the State	:	Mr. Nawal Kishore Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 06-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 19.08.2013 passed by the learned Judicial Magistrate, 1st Class, Danapaur, in Naubatpur P.S. Case No. 204 of 2012 by which the learned Magistrate took cognizance against this petitioner and two other accused persons for the offences under Section 302 and 379/34 of the Indian Penal Code.
2. Heard learned counsel for the petitioner, learned counsel for the informant and learned counsel for the State.
3. Learned counsel for the petitioner has submitted that the impugned order is bad in law because there is no any material against



the petitioner in the case diary. The police after investigation has not sent up this petitioner for trial. The court below merely on the basis of further statement of the informant recorded in paragraph-5 of the case diary, has taken cognizance against this petitioner along with two other accused persons.

4. The notice was issued to the informant who has appeared. Counter affidavit has been filed on behalf of the informant (opposite party No. 2) wherein in paragraphs 8 to 10 specific statement has been made that implication of the instant petitioner has been shown by the informant due to the fact that after occurrence, people in the vicinity were murmuring about the presence of instant petitioner at Naubatpur and since there is land dispute between the deceased and the petitioner, the deponent under suspicion believed the murmuring and gave information about the presence of instant petitioner at Naubatpur and involvement of the instant petitioner in causing the said occurrence.

5. The case diary has been received.

6. The learned A.P.P. has read paragraph-5 of the case diary which is further statement of the informant. The informant in his further statement has just repeated the version which he has given in the First Information Report. In the First Information Report, the name of this petitioner does not appear during first part of occurrence. It is alleged that brother of the informant was taken by co-accused Karu Paswan and Ajay Paswan. Therafter, it is alleged in the Fardbeyan subsequently, that petitioner was present in Naubatpur from before and the petitioner along



with other two co-accused named in the First Information Report, gave liquor to the brother of informant to drink, and all the three caused his death by pressing the neck and hydrocele. There is no other material against this petitioner in the entire case diary except further statement of informant recorded in paragraph-5 of the case diary.

7. Therefore, this Court is of the view that the impugned order passed by the court below, by which cognizance has been taken against the petitioner, is not in accordance with law.

8. Accordingly, the impugned order dated 19.08.2013 passed by the learned Judicial Magistrate, 1st Class, Danapaur, in Naubatpur P.S. Case No. 204 of 2012 against this petitioner along with entire criminal proceeding, is hereby, quashed.

9. This Cr. Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13/10/2017
Transmission Date	13/10/2017

