

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46212 of 2014

Arising Out of PS.Case No. -47 Year- 2013 Thana -MOTIHARI MUFASIL District-
EASTCHAMPARAN(MOTIHARI)

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1. Jai Prakash Prasad Son of Sri Himanchal Prasad @ Hemanchal Prasad resident
of village- Katha, P.S.- Motihari, Mufassil, District- East Champaran

2. Hariom Kumar @ Hariom Pd. Son of Sri Himanchal Prasad @ Hemanchal
Prasad R/o village- Katha, P.S.- Motihari, Mufassil, District- East Champaran

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar No. III, Advocate

For the Opposite Party/s : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 06-12-2017

Heard learned counsel for the petitioners and
learned Additional Public Prosecutor for the State.

2. The present case was lodged by one Manoj
Paswan who happened to be the Chowkidar of the area.
According to the F.I.R., some unknown persons had fired upon
one Surendra Rai, who was the husband of the Secretary of the
Government Middle School, *Katha* and was involved in
construction of the School building.

3. The case was registered under Section 307 of the
Indian Penal Code and Section 27 of the Arms Act, in course of
investigation, police could not find the clue of the accused
persons and accordingly a final form was submitted vide No.



73/2014 dated 30.06.2014.

4. The State has filed a counter affidavit in which a categorical statement has been made in paragraph-7 that neither the victim/injured said a single name of the person with whom he might have been on an inimical terms nor his wife said so. The informant also could not come forward to name any person as accused. Although, the case was found true but the identity of the accused persons could not be known.

5. Learned counsel for the petitioners submits that the learned Judicial Magistrate has differed with the police report and took cognizance of the offences under Section 307 I.P.C. read with 27 of the Arms Act and issued summons by passing a vague order that there is ample material for a *prima facie* case.

6. Learned counsel for the petitioners further submits that nothing has been mentioned in the impugned order to show that what are those materials which would give rise to a *prima facie* case for taking cognizance of the offences and then issuing process against the present petitioners.

7. Learned Additional Public Prosecutor for the State has placed the counter affidavit filed in the present case and submits that as per the final report submitted by the police



no material could be found to connect the present petitioners.

8. I have perused the impugned order and considered the submission made at the bar. It appears from the reading of the impugned order that the learned Sub-Divisional Judicial Magistrate, Sadar, Motihari has passed the impugned order taking cognizance and issuance of summon without even briefly referring to the materials available on the record which might have laid him to take a *prima facie* view.

9. On the face of the submissions and considering the statements made in the counter affidavit, I am of the opinion that the impugned order suffers from infirmity inasmuch as nothing is indicated to show in the impugned order as to what are those materials which have given rise to a *prima facie* view in the mind of the learned Sub-Divisional Judicial Magistrate, Motihari.

10. In the opinion of this Court, if the learned Sub-Divisional Judicial Magistrate, Motihari was differing with the police report, he should have at least indicated the materials briefly to show that those are available on the record to give rise to a *prima facie* view. The words 'ample material' seems to be vague and leads nowhere.

11. The impugned order, therefore, suffers from



illegality and infirmity. It is, accordingly, dismissed.

12. The learned Sub-Divisional Judicial Magistrate, Sadar, Motihari shall peruse the record once again and take a view afresh on the basis of the materials available on the record in the present case.

13. This application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J.)

jRajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.12.2017
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