

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52091 of 2014

Arising Out of PS.Case No. -62 Year- 2007 Thana -MOTIHARI TOWN District-
EASTCHAMPARAN(MOTIHARI)

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Satyam Kumar Srivastava @ Satyam Kumar s/o Late Upendra Kumar
Srivastava, resident of Mohalla- New Agarwa, P.S.- Town, District- East
Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Motihari, East
Champaran

2. Basant Kumar Singh, S/O Late Nayak Singh, resident of Mohalla-
Krishna Nagar, P.S.- Motihari Town, District- East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh

For the Opposite Party/s : Mr. Md. Ataur Rahman(App)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

3 18-12-2017 Heard learned counsel for the petitioner and learned
counsel for the state.

2. Petitioner seeks quashing of cognizance order
dated 11.09.2013 passed by Mr. S.K.Singh, Judicial Magistrate, 1st
Class, Motihari, East Champaran in trial No. 5016 of 2013
whereby taking cognizance of offence under Section 302/34 of the
Indian Penal Code.

3. The brief facts giving rise to the case is that there
is case and counter case between both sides. Petitioner's father
lodged Motihari Town P.S.Case No. 60 of 2007 under Sections
302/34 and 120B of the Indian Penal Code alleging murder of his
son Ambesh Kumar @ Aman Singh by Brajesh Kumar and



Kaushal Kishore Singh, who is the brother of O.P. No. 2. Whereas O.P. No. 2 lodged Motihari Town P.S. Case No. 62 of 2007 under Section 302/34 of I.P.C. for the same occurrence alleging that petitioner's side killed his brother Kaushal Kishore Singh. It is alleged in the FIR lodged by the petitioner in Motihari Town P.S. Case No. 60 of 2007 that while Kaushal Kishore Singh and others, after killing his brother retreating away was caught and assaulted by crowd. However, police submitted final form in Motihari Town P.S. Case No. 62 of 2007 coming to the conclusion that case is clueless.

4. A protest petition was filed by the informant of the said case then the Magistrate proceeded for enquiry under Section 202 of Cr.P.C, against which informant preferred revision which was dismissed by order dated 21.08.2008 passed in Cr. Revision No. 2005/2006 of 2008. The dismissal order was challenged by the complainant/ informant before this Court in Cr. Misc. No. 35666 of 2009 wherein by order dated 12.08.2013 remitted the matter back to the Magistrate for passing a fresh order on the basis of material available on the protest petition, consequently, impugned order taking cognizance has been passed.

5. Learned counsel for the petitioner submits that there is much difference in police case earlier lodged by the O.P.



No. 2 and the protest petition filed by him and the same is also discussed in the impugned order.

6. Contrary to this, learned counsel appearing on behalf of the State submits that there is sufficient material at the enquiry stage for taking cognizance; moreover, the High Court, vide earlier order passed in Cr. Misc. No. 35666 of 2009, remitted the matter back to the Magistrate as earlier the complaint was dismissed, which means that finding *prima facie* case, the court directed the Magistrate to pass a fresh order.

7. Having considered the rival submissions and on perusal of record, the Court finds that on the basis of material transpiring during course of enquiry, learned Magistrate has taken cognizance of offence. Moreover, in Cr. Misc. No. 35666 of 2009 the matter was remitted back by this Court disagreeing with the earlier order of the trial court dismissing the complaint and affirmation of the same by the Sessions Court. So finding no merit, this application stands dismissed.

(Arun Kumar, J)

Sujit/-

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