

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42201 of 2014

Arising Out of PS. Case No.-90 Year-2014 Thana- SALKHUA District- Saharsa

1. Mantu Yadav Son of Dayanand Yadav
2. Pintu Yadav Son of Dayanand Yadav Both Resident of Village -
Parasbani, P.S. - Salkhua (Banma Itahari O.P.), Dist.-Saharsa

... .. Petitioner/s

Versus

1. State of Bihar
2. English Devi Wife of Late Wakil Sada Resident of Village - Parsbani Dhobiya
Tola, P.S. - Salkhua (Banma Ithari O.P.) Dist.-Saharsa

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shiva Shankar Sharma
For the Opposite Party/s : Mr. RAM SHANKAR DAS (SPL.PP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 01-11-2017

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 04.08.2014 passed by learned Judicial Magistrate, 1st Class, Saharsa in Salkhua P.S. Case No. 90 of 2014, by which cognizance has been taken under Sections 341, 342, 323, 302/34 of the Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, against the petitioners.

Briefly stated, the facts of the case on 28.04.2014, the



husband of the informant namely Wakil Sada went to do some labour work of Biro Yadav and he did not return to the house till late hours then the informant went out to search her husband. The husband of the informant had gone to the door of Pappu Yadav who was doing thrashing work of wheat crops. Accused Pappu Sada told her husband to keep the thrashed wheat in the bag and on refusal, all the accused persons assaulted her husband and Pappu Yadav gave farsa blow on the head of Wakil Sada, who died on the spot. On the basis of fardbeyan of informant English Devi, Salkhua (Bama Itahari) P.S. Case No. 90 of 2014 dated 29.04.2014 under Sections 341, 342, 323, 302/34 of the Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, was instituted against the accused persons.

After investigation, police submitted chargesheet no. 119 of 2014 on 21.07.2014 against Pappu Yadav for the offence punishable under Sections 341, 342, 323, 302/34 of the Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, and petitioners were found innocent and were not sent up to face the trial. The petitioners Mantu Yadav and Pintu Yadav were shown innocent in the chargesheet.



The court below after perusing the FIR, case diary and statement of witnesses recorded by the investigating officer and evidences collected during investigation and also on the basis of protest petition filed by informant against the petitioners, found sufficient materials against the petitioners for taking cognizance and proceeding against them under Sections 341, 342, 323, 302/34 of the Indian Penal Code read with Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, and took cognizance against them, issued summons to the petitioners and committed the case to the court of Session.

The trial court is not bound by the opinion of the investigating officer and on the basis of FIR, case diary and statement of witnesses recorded during investigation and materials collected during investigation can differ with the opinion of the investigating officer and take cognizance against the persons who have not been sent up by the police for trial.

I am not inclined to interfere with the order dated 04.08.2014 at this stage. However, the petitioners are granted liberty to raise all the issues raised before this Court as well as other points available to them in accordance with law, at the time of filing of discharge petition/framing of charge, if not



already framed.

With the said observation and liberty, this petition is
disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A
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