

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No 50247 of 2013

Arising Out of PS.Case No. -96 Year- 2013 Thana -BRAHMPUR District- BUXAR

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Anil Kumar Yadav S/O Late Rabindra Yadav Resident Of Village - Mauar, P.S.
Brahampur, Nainijor (OP), District - Buxar

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Narbdeswar Prasad Singh, Advocate

For the S t a t e : Mr Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 27-04-2017

Heard both sides.

2 The petitioner filed this petition under Section 482 of the Code of Criminal Procedure for quashing the order dated 26.08.2013 passed in Brahampur Police Station Case No 96 of 2013 corresponding to GR No 877 of 2013 by which the learned Chief Judicial Magistrate took cognizance under Sections 341, 323/34 of Indian Penal Code and Sections 25 (1-B)A, 26, 35 and 27 of the Arms Act against the petitioner Anil Kumar Yadav and co-accused Jitu Yadav and Haresh Yadav.

3 The facts, as disclosed by the informant Mahavir Singh in his Fardbayan on the basis of which Brahampur PS Case No 96 of 2013 was registered under Sections 307 and other Sections of



the IPC and different Sections of Arms Act are that on 15.04.2013, his co-villager Haresh Yadav, Jitu Yadav were grazing his Parval crops by she buffalos. When the watchman of the informant scolded them, both went to their house and came along with Anil Kumar Yadav, the petitioner with two other unknown persons. The accused persons assaulted the watchman of the informant. When the informant went to the field to provide food to his watchman, Anil Kumar Yadav fired at him and started fleeing away towards north. The informant and other persons, namely, Gama Singh, Barmeshwar Tiwary, Dharmvir Singh, Lukendra Singh, who were working in the adjoining fields, chased Anil Kumar Yadav and caught him. Two other accused persons managed to flee away. The informant and others recovered countrymade pistol, three live cartridges and one empty cartridge from the possession of Anil Kumar Yadav. The informant produced the recovered arms and ammunitions to the Police Station. The police took up investigation and after investigation, the police found the case true under Sections 323, 341/34 of IPC against Jitu Yadav and Haresh Yadav but found the accusation against the petitioner Anil Kumar Yadav incorrect and false and, accordingly, submitted report under Section 173 (2) of Cr P C. The learned CJM, vide order dated 26.08.2013, took cognizance against all the accused persons differing with the findings of the Investigating Officer.



4 The learned counsel for the petitioner assails the order aforesaid and submitted that once the police, after thorough investigation, found the case false against the petitioner, the learned CJM has got no jurisdiction to take cognizance against the petitioner. It is further submitted that the police, during the course of investigation, found that the informant himself transplanted the arms and ammunitions and showed false recovery from Anil Kumar Yadav, the petitioner. On such facts collected during the course of investigation, ASI Hashmatullah Khan instituted Brahampur PS Case No 211 of 2013 on 04.08.2013 under Sections 25 (1-B), 26 and 27 of Arms Act against Mahavir Singh, the informant of the case and recommended for proceeding under Sections 182 and 211 of Cr P C against the informant Mahavir Singh. It is further submitted that there is no material in the entire case diary to show that the arms were recovered from the possession of Anil Kumar Yadav, the petitioner. Therefore, the order taking cognizance against the petitioner is bad.

5 Learned counsel for the petitioner placed reliance on a judgment of the Supreme Court in the case of *State of Gujarat – Versus- Girish Radhakrishnan Varde*, reported in 2014 (2) PLJR 152 (SC).

6 Having considered the submission of the learned counsel for the petitioner and on perusal of the records, the question



arises as to whether the learned Chief Judicial Magistrate has got jurisdiction to take cognizance of the offence against the petitioner although the police, after investigation, submitted final form finding the case false against the petitioner? Section 190 of Cr P C provides powers of cognizance which reads as follows:

“190. Cognizance of offences by Magistrates.

–(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

7 A bare perusal of Clause (b) of sub-section (1) of Section 190 of Cr P C, it appears that upon a police report of such facts, the Magistrate of the First Class is empowered to take cognizance of the offence even if the police finds the accusation against any of the accused untrue and false. There is no cap on the power of the Judicial Magistrate to take cognizance in such cases.

8 The facts of the present case reveal that the police,



during the course of investigation, took the statement of some of the so-called independent witnesses and came to a finding that it was the informant Mahavir Singh who showed false recovery of arms and ammunitions from the accused Anil Kumar Yadav and on such evidence, the police submitted final form finding the case false against Anil Kumar Yadav but on perusal of the case diary, it appears that the informant and his witnesses, who are said to have apprehended the accused Anil Kumar Yadav on chase and recovered countrymade pistol, live cartridges and empty cartridge from him, have very categorically stated that the arms and ammunitions were recovered from the possession of Anil Kumar Yadav. The learned CJM took cognizance after going through the records, On the facts, I find the judgment, on which the learned counsel for the petitioner placed his reliance, is not at all relevant in the facts and circumstances of the present case and I do not find any illegality in the order impugned.

9 Having considered the facts aforesaid, I do not find any illegality in the order impugned. Accordingly, this quashing application is dismissed.

(Prabhat Kumar Jha, J)

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