

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21012 of 2014

Arising Out of PS.Case No. -186 Year- 2013 Thana -BIHIYA District- BHOJPUR

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Janardan Yadav son of late Kabela Yadav resident of village - Bara
Khraoni, P.S. Bihiya, District - Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Tija Kalwar son of Ganesh Prasad
3. Chhotak Kalwar son of late Sheonarayan Prasad Both resident of village
- Bara Kharaoni, P.S. Bihiya, District - Bhojpur
4. Bittu Rai son of late Samhut Rai resident of village - P.S. Bihiya,
District - Bhojpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh
For the Opposite Party/s : Mr. Najir Ansari (App)

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER**

4 02-08-2017 Heard learned counsel for the petitioner, State and the

counsel appearing on behalf of the opposite party.

The petitioner is aggrieved by order dated 15.2.2014
passed by Sri Manoj Kumar, Judicial Magistrate, Arrah in Bihiya
P.S. Case No. 186 of 2013 dated 15.9. 2011. The petitioner is the
informant of Bihiya P.S. Case No. 186 of 2013. He claims to be
the eye-witness of the incident and as per his version on the basis
of FIR his brother who is physically challenged was killed by the
accused persons.

The grievance of the petitioner in the instant case is that



though the FIR was lodged by the informant who is eye-witness in the instant case with specific case of murder of his brother but after completing perfunctory investigation, the police submitted charge-sheet under section 304(A) of the Indian Penal Code and the case of murder was painted as death due to rush and negligent driving. The petitioner apprehending foul play in the investigation and failure of complete justice in the instant case, approached this court by invoking jurisdiction under section 482 of the Cr.P.C.

Counsel for the opposite parties no. 2 to 4 submits that petitioner is not remediless, if materials are placed even at the stage of trial to establish the case of murder and not accident, the court below may exercise discretion and alter the charge and commit the matter to the Sessions Court, if such materials are available. He also submits that the affidavit purportedly filed by the alleged five independent witnesses cannot be taken as evidence to conclude that instant case is not case of 304(A) but of 302. The learned Magistrate while taking cognizance under section 304(A) of the Indian Penal Code has committed no error of jurisdiction. The learned Magistrate while exercising judicial discretion was justified in passing the order in view of the materials collected during the course of investigation and this court should not sit in appeal in the matter of discretion exercised



by the trial court at this stage in exercise of jurisdiction under section 482 of the Cr.P.C. Justice does not mean only justice to the accused but justice to the victim also. The system depend on the faith of the litigant and if the litigant has justified reason and materials for apprehension of miscarriage of justice then the court is under obligation to do justice and issue appropriate direction for the ends of justice.

Counsel for the petitioner has submitted that not only the informant but there are five independent eye-witnesses who have filed their affidavits before the court below that they have seen the occurrence and the victim was killed and not died in road accident. Be that as it may, fair trial is the essence of justice. The accused are entitled to fair treatment in the trial at the same time victim is also entitled to the consideration of the entire evidence connected with the occurrence. The police during the course of investigation has failed to record the statements of eye-witnesses and as such they have filed their affidavit in the court below. In the peculiar facts and circumstances, the court below is supposed to consider the relevance of the deposition of such witnesses irrespective of the fact that in the charge-sheet, submitted by the police alleged eye witnesses have been cited as witnesses or not. At this stage, this court can only issue direction that in the event



such witnesses tender their deposition in the trial, the court below should record their statements and evaluate on the basis of their deposition at the stage of trial and if ultimately found that deposition of the witnesses who claims to be eye-witnesses are consistent with the statement of the informant in the FIR, the court below would be under obligation to pass appropriate order in accordance with law after due scrutiny of evidence of five independent eye-witnesses whose statement was not recorded by the police during investigation.

With the aforesaid observation, the application is disposed of.

(Anil Kumar Upadhyay, J)

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