

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21629 of 2014

Arising Out of PS.Case No. -1718 Year- 2012 Thana -WEST CHAMPARAN COMPLAINT
District- WESTCHAMPARAN(BETTIAH)

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1. Harilal Sah, son of Late Kanchan Sah
2. Mrityunjay Mishra, son of Sri Rajendra Mishra
3. Sheikh Jabbir, son of late Sheikh Serajul Haque
4. Pradeep Sah, son of Sri Harilal Sah
5. Sunil Sah, son of Sri Harilal Sah
6. Sushil Sah, son of Sri Harilal Sah
7. Moti Chand Sah, son of Birjan Sah
All resident of village - Bisunpurba, P.S. Shikarpur, District - West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Most. Rita Devi, wife of Late Bindeshwari Yadav, resident of village - Mahuawa
Bisunpurba, P.S. Shikarpur, District - West Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.
Mr. Ravi Ranjan, Adv.
For the Opposite Party no.1 : Mr. R.N. Jha, APP
For the Opposite Party no.2 : Mr. Sanjay Kumar No.7, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 16-08-2017

Heard learned counsel for the petitioners, learned
counsel for the opposite party no.2 as well as learned APP for the
State.

The petitioners, in the present case, are seeking
quashing of the order dated 06.03.2014 passed by the learned Judicial
Magistrate-1st Class, West Champaran at Bettiah in Complaint Case
No.1718C of 2012/Trial No.2669 of 2014 for the offences alleged
under Sections 302, 201/34 of the Indian Penal Code.



Learned counsel for the petitioners submits that earlier a police case being Shikarpur P.S. Case No.35 of 2011 was registered at the instance of the informant and after investigation the police submitted final form saying 'mistake of fact'. However, the informant filed protest petition which was treated as a complaint case and in the said complaint case the present order taking cognizance has been passed. Submission of the learned counsel is that a perusal of the postmortem report, as contained in Annexure-6, would show that no offence under Section 302 of the Indian Penal Code is made out for the purpose of issuance of summons.

On the other hand, learned counsel appearing on behalf of the opposite party no.2 submits that, in the present case, apart from the complainant, four witnesses have deposed in course of enquiry and all of them have supported the version of the complainant that these petitioners had taken away the deceased saying that there was some work, later on he was found dead with injuries. It is further submitted that, at this stage, while the court has taken cognizance and has issued process, this Court in exercise of its jurisdiction under Section 482 Cr.P.C. may not likely to go into the merit of the allegations or evidentiary value of the postmortem report and any other document that has been brought by way of defence on behalf of the petitioners.



After hearing the learned counsel for the parties and upon perusal of the records, this Court is of the considered opinion that no illegality or infirmity may be found with the order taking cognizance and issuance of process. There are some materials available on the record on the basis of which prima facie view may be taken and it is only on that prima facie view the learned Magistrate has issued summons. The statements of the complainant and the enquiry witnesses are indicating towards that prima facie view. This Court is, therefore, not inclined to interfere with the order taking cognizance and issuance of process.

The application is dismissed.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
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