

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31600 of 2012

Arising Out of PS.Case No. -28 Year- 2003 Thana - Buniyadganj District- GAYA

- =====
1. Ramdahin Yadav @ Ramdarin Yadav S/O Sri Gobind Yadav R/O Village - Shadipur, P.S. Buniyadganj, Distt. - Gaya
 2. Anil Yadav S/O Ramdahin Yadav @ Ramdarin Yadav R/O Village - Shadipur, P.S. Buniyadganj, Distt. - Gaya
 3. Prakash Yadav S/O Gopal Yadav R/O Village - Shadipur, P.S. Buniyadganj, Distt. - Gaya
 4. Gobind Yadav S/O Late Khirodhar Yadav R/O Village - Shadipur, P.S. Buniyadganj, Distt. - Gaya
 5. Sanjay Yadav S/O Gobind Yadav R/O Village - Shadipur, P.S. Buniyadganj, Distt. - Gaya

.... Petitioners

Versus

1. The State Of Bihar
2. Siddheshwar Yadav S/O Late Bishnu Yadav R/O Village - Shadipur, P.S. Buniyadganj, Distt. - Gaya

.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Deepak Kumar
Mr. Dhananjay Kumar Gupta
Mr. Harish Chandra Patel
For the Opposite Party/s : Mr. Jharkhani Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-05-2017

Heard the learned counsel for the petitioners and the learned APP for the State.

2. The petitioners seek quashing of the order dated 18.05.2011 passed by the learned Judicial Magistrate, First Class, Gaya in Complaint Case No. 1977 of 2008. The Magistrate, as per impugned order, finding prima facie case for the offence under Section 302/34 of the Indian Penal Code, ordered for issuance of



summons against the petitioners.

3. The facts in brief is that the Opposite Party No. 2 (Complainant) lodged a police case bearing Buniyadganj P.S. Case No. 28 of 2003 alleging that on 27.06.2003 at about 10 P.M., his wife went out of his house to meet the call of nature and when she was returning, the accused persons intercepted and abused her. They asked his wife as to why she divulged the name of the person who was not residing in the village. It has further been alleged that on the order of the petitioner Gobind Yadav, other petitioners brutally assaulted her by iron rod, lathi and brick-bat. The informant while carrying his wife to Doctor, died in the way. When the investigation was going on, the informant suspecting some foul play of the investigating agency, filed a protest petition before the court of Chief Judicial Magistrate on 14.07.2003. After investigation, police submitted final form on 31.12.2007 as case untrue. Police came to the conclusion that it was not a case of murder rather the victim died of snake bite. The protest petition was treated as complaint and in course of enquiry, the complainant on S.A. and other witnesses examined on his behalf supported the allegation of assault. The Magistrate after considering the statement of complainant and his witnesses and also the post mortem report of the deceased found prima facie case for the



offence under Section 302/34 of the Indian Penal Code against the petitioners, ordered for issuance of summons.

4. The counsel for the petitioners submits that they have been implicated by the informant on account of enmity. The matter was investigated by police who came to the conclusion that the deceased had died due to snake bite. The Magistrate has not considered the statement recorded at paragraph nos. 8, 9, 10, 13, 21, 23, 24, 34 and 48 of the case diary, which speaks different version. The Magistrate has passed the order in a mechanical way and is fit to be quashed.

5. The learned APP, on the other hand, opposed the submission.

6. On perusal of record and also considering the submission at Bar, I find that the F.I.R. was lodged promptly on the following day at about 8.30 A.M. The informant has specifically alleged that all the petitioners intercepted his wife in the night of 27.06.2003 at 10 P.M.. They all assaulted his wife by iron rod, lathi and brick bite. The information was given to police at about 11.40 P.M. on the same day. From impugned order, it further appears that after institution of the case, the informant filed a protest petition on 14.07.2003. The case remained pending for investigation for six months and final form was submitted on



31.12.2007 as clueless. The Magistrate also examined the post mortem report wherein the Doctor has overruled the possibility of snake bite. The cause of death has been reported to be bleeding and injury which was caused by hard blunt substance. The Magistrate further perused the F.S.L. Report No. 859 of 2004 dated 16.01.2008 wherein no metallic alkaloidal, Glycosidal, Pesticidal or volatile poison could be detected. The Magistrate considering the post mortem report, F.S.L. Report, statement of complainant and his witnesses in course of enquiry found prima facie case under Section 302/34 of the India Penal Code against all the petitioners.

7. In view of the discussions made above, I do not find any merit in the submission of the counsel for the petitioners. This petition is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.05.2017
Transmission Date	09.05.2017

