

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38835 of 2014

Arising Out of PS.Case No. -707 Year- 2010 Thana -SARAN COMPLAINT CASE District-
SARAN

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Birendra Singh @ Birendra Kumar Singh, Son of Late Nirakhan Singh, resident of
village - Salaha, Police Station - Garkha, District - Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Lalpati Devi, Wife of Late Ram Narayan Singh, resident of village - Salaha,
Police Station - Garkha, District - Saran at Chapra.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate.

Mr. Satya Prakash, Advocate.

For the Opposite Party/s : Mr. Shyam Bihari Singh, APP.

Mr. Sudama Singh, Advocate.

Mr. Surendra Kumar Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 30-03-2018

Heard learned counsel for the petitioner as well as learned
counsel for the O.P. No. 2 and the State.

2. Petitioner seeks quashing of the cognizance order dated
10.02.2014 passed by learned Judicial Magistrate, Saran at Chapra in
Complaint Case No. 707 of 2010 thereby taking cognizance of offence
under Sections 147, 148, 149, 447 and 307 of the Indian Penal Code and
27 of the Arms Act.

3. The factual matrix of the complaint is that complainant
lodged Garkha P.S.Case No. 206 of 2007 dated 06.12.2007 registered
under Sections 147, 148, 149, 447, 307 of the Indian Penal Code and 27
of the Arms Act, alleging therein that on hearing some movement in the



night at around 11:30 P.M., she woke up and saw in the flash of torch light, Birendra Singh, Shashi, Arjun Singh, Pankaj Singh, Bhim Singh and Sunil Singh, all standing there at Varandah. Birendra Singh was armed with gun, as she came near the door, Birendra Singh shot at her causing firearm injury in her hand. She fell down however family members turned up and brought her to another room. The Police reached there, thereafter she was taken to P.M.C.H., Patna for treatment.

4. On conclusion of investigation, the police submitted final form finding the case false, so protest petition was filed by the informant/complainant and treating the same as complaint, enquiry was held thereafter cognizance of offence has been taken by the impugned order.

5. Learned counsel appearing on behalf of the petitioner submits that case of the prosecution is patently absurd and improbable also. He however elaborates that petitioner was shot at by firearm by grandson of the present complainant on the same day on 05.12.2007 at 10:30 P.M. which hit on his right parietal region of head thereafter immediately he was brought to P.M.C.H., Patna and was admitted there and the petitioner was examined in P.M.C.H. and refers to Annexure-7 of the Supplementary affidavit stating that he was admitted there at 12:30 A.M. on 06.12.2007 the same night just after two hours of the occurrence. The injury report also reflects that he sustained firearm injury. Whereas in the present case, lodged by the complainant, time of



occurrence is 11:30 P.M., at that time the petitioner was on way to Patna for treatment as head injury was caused to him by grandson of the present complainant an hour prior to the present occurrence. Moreover, case is further disbelieved on the ground that no firearm injury is found on the person of the informant and refers to Annexure-8. According to medical report, nature of injury is of multiple sharp cutting wound on right shoulder and simple in nature. So considering every aspect of the matter, the investigating agency has found the case false.

6. Learned counsel appearing on behalf of the complainant submits that a *prima facie* case is made out against the petitioner as the allegation is of making an attempt on life of the complainant and she had sustained injury and also referred to P.M.C.H.

7. Having considered the rival submissions and on perusal of record, the Court finds that there is case and counter case filed by both sides and in the case filed by the petitioner on the same day, time of occurrence is 10:30 P.M. and the accused is grandson of the present complainant, who alleged to have shot at the face of the petitioner causing firearm injury, as it reflects from the injury report. Whereas time of occurrence in the present case of the complainant is 11:30 P.M., the petitioner was brought to Patna and admitted to P.M.C.H. just after two hours of the alleged occurrence. Injury report of the complainant does not show that she sustained firearm injury.

8. Considering all these aspects, earlier the police also had



submitted final form against all accused persons in this case finding the case false. So considering the material on record and in view of the aforesaid discussion, the Court does not find *prima facie* case under Sections 147, 148, 149, 447 and 307 of the Indian Penal Code and 27 of the Arms Act being made out against the petitioner as the case of the complainant, in view of the factual matrix of both cases, appears patently absurd and improbable particularly, considering the time of occurrence of both cases as well as injury of the present complainant, so continuation of the criminal proceeding in the instant case against the petitioner would be abuse of the process of the court.

9. Hence, the impugned order dated 10.02.2014 passed by the learned Judicial Magistrate, Saran at Chapra in Complaint Case No. 707 of 2010 and subsequent criminal proceeding in the matter against the petitioner is set aside. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.04.2018
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