

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3405 of 2014

Arising Out of PS.Case No. -132 Year- 2009 Thana -KESARIA District- EASTCHAMPARAN
(MOTIHARI)

- =====
1. Rinki Devi, wife of Sri Jitendra Prasad,
 2. Jitendra Prasad, son of Sri Laxmi Prasad,
 3. Laxmi Prasad, son of late Sukhdeo Prasad, all resident of village - Benipur, P.S.
- Kesharia, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Chhatri Prasad, son of late Mangal Prasad, resident of village-Khijarpura,
P.S.-Kesharia, District- East Champaran.

.... Opposite Party/s

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Appearance :

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

For the Opposite Party No.1: Mr. S. M. Rahman, APP

For the Opposite Party No.2: Ms. Priyanka Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 04-10-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 08.07.2013 passed by the 3rd Additional Sessions Judge, East Champaran, in Sessions Trial No.762 of 2012 arising out of Kesariya P.S. Case No132 of 2009 by which the Court below has refused to discharge the Petitioners and rejected the petition filed on behalf of the Petitioners under Section 227 Cr.P.C.

2. As per Complaint filed by one Ram Chhatri Prasad on 13.05.2009 in relation to an occurrence alleged to have taken place on 30.04.2005 in the Court of the Chief Judicial Magistrate, Motihari, prosecution case is that Sabita Kumari, grand-



daughter of the Informant was married with Ashok Prasad. She was blessed with a daughter, who was six months old, namely, Anjali. It is also alleged that deceased, Ashok Prasad, used to visit his *Sasural*, but mostly he was staying with Rinki Kumari, wife of Jitendra Prasad, and his father Laxmi Prasad, who runs a shop of pesticide at Benipur Chowk. The Informant had also gone to Benipur Chowk and found Ashok Prasad, Jitendra Prasad and Laxmi Prasad were sitting at the shop having parked his motorcycle and the Informant returned back. It is further alleged that at 5.00 PM Jitendra Prasad brought Ashok Prasad on his motorcycle having *Gamcha* around his neck to the house of the Informant and dropped him. It is also alleged that Ashok Prasad was in the state of intoxication and was trembling and complaining about restlessness in his abdomen. Jitendra Prasad and the person accompanying him told that he is over drunk and dropped Ashok Prasad at the house of the Informant and went away. The Informant called local Compounder and the Doctor, who advised to take him to some other place. While the Informant was preparing to take him outside, he died in the house of the Informant. The police and father of Ashok Prasad were informed. Postmortem was also done, but police did not record statement of the Informant. The Informant alleged that Rinki Devi is sister-in-law (*Saali*) of elder brother of Ashok Prasad (since deceased). Rinki Devi



is wife of Jitendra Prasad and daughter-in-law of Laxmi Prasad. The deceased, Ashok Prasad, had illicit relationship with Rinki Devi and on the pretext of visiting *Sasural* he used to spent sufficient time at the house of Rinki Devi. The said fact became known to Jitendra Prasad and Laxmi Prasad and for that reason Laxmi Prasad in collusion with Rinki Devi called Ashok Prasad to their house on 30.04.2005 and administered something at their pesticide shop. They also administered poison in Alcohol. Thereafter, dropped him at the house of the Informant.

3. Aforesaid complaint was filed by the Informant on 13.05.2009 after about four years of the occurrence and the same was referred by the Chief Judicial Magistrate to the P.S. under Section 156(3) Cr.P.C. on the basis of which Kesaria P.S. Case No.132 of 2009 dated 12.08.2009 was registered against the Petitioners.

4. The deceased, Ashok Prasad, is son of Shankar Prasad. Counsel for the Petitioners has submitted that said Shankar Prasad, father of the deceased, had earlier lodged a case on 01.05.2009 with Kesaria Police Station alleging that about four years prior his son Ashok Prasad was married with Sabita Devi, daughter of Suresh Prasad, son of Ram Chhatri Prasad. The wife and her parents were pressurizing him to stay at Khijarpura for which he was



not ready and for that deceased, Ashok Prasad, was threatened of dire consequences. Sabita Devi was staying at Khijarpura and her behaviour with Ashok Prasad was not cordial. On 30.04.2009, 3-4 calls were made on the mobile of son of the Informant and his son told that his condition is not well and told the Informant to come with some money. The Informant arranged rupees ten thousand and went to village Khijarpura. It is alleged that one Jitendra Prasad rang him and informed that Ashok Prasad has been murdered. Accordingly, the Informant with some villagers went to village Khijarpura and found that Ashok Prasad was lying dead at the house of Suresh Prasad. The Informant has alleged that he believed that Suresh Prasad, son of Ram Chhatri Prasad, wife of Suresh Prasad, Sabita Devi (wife of Ashok Prasad, since deceased), Kabita Devi, and Mamta Kumari, daughter of Suresh Prasad had killed his son.

5. The police registered Kesariya P.S. Case No.85 of 2009 on 01.05.2009 on the basis of aforesaid allegation for the offence under Section(s) 328, 302/34 Indian Penal Code. Post mortem of dead body of Ashok Prasad was done on 01.05.2009 in connection with Kesariya P.S. Case No.85 of 2009. The police investigated both the cases. The police submitted charge-sheet in Kesariya P.S. Case No.85 of 2009 lodged by Shankar Prasad, father of the deceased, against the Informant of this case and his other



family members on 27.01.2012. Cognizance was taken and the case was committed to the Court Sessions and registered as Sessions Trial No.760 of 2012 and trial also proceeded after framing of Charge in that case.

6. The police after investigation found the instant case i.e. Kesariya P.S. Case No. 132 of 2009 false and submitted Final Report recommending action under Section 182, 211 Indian Penal Code against the Informant. Final Report submitted in instant case is annexed as Annexure-3. The Court below on the basis of Protest Petition found *prima facie* case against the Petitioners for the offence under Section(s) 302, 328, 201, 120-B Indian Penal Code by order dated 22.12.2011. Thereafter, the case was committed to the Court of Sessions and numbered as Sessions Trial No.762 of 2012 arising out of Kesariya P.S. Case No.132 of 2009.

7. Learned counsel for the Petitioners submits that in the case instituted by Shankar Prasad, father of the deceased Ashok Prasad, neither these Petitioners figure as accused nor any allegation has been made against them. The Informant Ram Chhatri Prasad at the belated stage in order to create defence and to save his grand-daughter and other family members has lodged instant false case with concocted story against the Petitioners, which after investigation was found to be false by the police.



8. The Petitioners have filed application under Section 227 Cr.P.C. for their discharge which was rejected by the Court below in mechanical manner without looking into the case diary and taking into consideration the submission of the parties.

9. Having heard both the parties and on perusing the impugned order and materials on record, this Court finds that in the impugned order it is mentioned that the police submitted Final Form in instant case and recommended for taking action under Section 182, 211 Indian Penal Code against the Informant. The Court below has also mentioned in the impugned order that father of Ashok Prasad has filed earlier a case against the Informant and his other family members vide Kesariya P.S. Case No.85 of 2009 for the offence under Section(s) 328 and 302/34 Indian Penal Code, which was found to be true after investigation and police submitted charge-sheet against the accused persons of that case (Informant and his family members). That case has been committed to the Court of Sessions and trial has proceeded vide Sessions Trial No.760 of 2012.

10. The Court below has also mentioned in the impugned order that after filing of Kesriya P.S. Case No.85 of 2009, accused of that case has filed a Complaint for the same occurrence against these Petitioners, which was sent to P.S. under Section 156(3) Cr.P.C. on the basis of which Kesariya P.S. Case No.132 of



2009 was registered and the police, ultimately, after investigation submitted Final Report finding the case to be false.

11. The Court below has further mentioned in the impugned order that learned Chief Judicial Magistrate, East Champaran, after perusal of the case as well as Protest Petition and Affidavits of the witnesses has taken cognizance for the offence under Section(s) 302, 328, 201, 120-B/34 Indian Penal Code against the accused of the instant case showing their complicity in committing murder of Ashok Prasad.

12. From the impugned order, it appears that learned Additional Sessions Judge, East Champaran, has rejected the petition filed under Section 227 Cr.P.C. mainly on the ground that Petitioners did not prefer any revision against the order of cognizance nor they agitated the matter under Section 209 Cr.P.C. at the time of commitment. Learned Additional Sessions Judge, East Champaran, after relying on the Affidavits of the witnesses filed along with Protest Petition found the complicity of the Petitioners in the crime.

13. A report with regard to present stage of Sessions Trial No.760 of 2012 arising out of Kesariya P.S. Case No.85 of 2009 was called for, which has been received. The learned Additional Sessions Judge, East Champaran, has mentioned in the report that aforesaid Sessions Trial is pending for prosecution



evidence. Four witnesses have already been examined in that case.

14. This Court finds that instant case has been filed by the Informant, whose family members are accused in aforesaid Sessions Trial No.760 of 2012, just as counter blast to save his grand-daughter, Sabita Devi, and other family members, who are facing trial in Sessions Trial No.760 of 2012 arising out of Kesariya P.S. Case No.85 of 2009. From mere perusal of the Complaint, it appears that date of occurrence is said to be 30.04.2005, but Complaint has been filed on 13.05.2009 in the Court of the Chief Judicial Magistrate, East Champaran, which was sent to the P.S. under Section 156(3) Cr.P.C. on the basis of which Kesariya P.S. Case No.132 of 2009 was registered by the police. The police after investigation found the case false and recommended for action under Section 182, 211 Indian Penal Code against the Informant of that case.

15. The Court below without looking into the materials in the case record and case diary has rejected discharge petition by the impugned order merely on the ground that Petitioners have neither challenged the order of cognizance by filing revision nor agitated the matter under Section 209 Cr.P.C. at the time of commitment. The learned Court below has rejected the discharge petition after relying on the Affidavits filed in the Court along with



Protest Petition.

16. In view of such, this Court finds that impugned order passed by the Court below suffers from illegality.

17. Accordingly, impugned order dated 08.07.2013 passed by the 3rd Additional Sessions Judge, East Champaran, in Sessions Trial No.762 of 2012 arising out of Kesariya P.S. Case No.132 of 2009 is hereby quashed. The Petitioners are discharged from the offences alleged against them.

18. This application is, accordingly, **allowed**.

19. Let record of Sessions Trial No.762 of 2012 as well Sessions Trial No.760 of 2012 be returned forthwith to the Court below.

20. The Court below will proceed in Sessions Trial No.760 of 2012 arising out of Kesariya P.S. Case No.85 of 2009 in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	09-08-2018
Uploading Date	15-10-2018
Transmission Date	15-10-2018

