

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47251 of 2013

Arising Out of PS. Case No.-7 Year-2006 Thana- CHAND District- Bhabhua (Kaimur)

1. SHYAM LAL YADAV SON OF LATE DUDH NATH YADAV RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
2. RAJ KUMAR YADAV SON OF SADLU YADAV RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
3. PRADEEP KUMAR PANDEY SON OF BATESHWAR PANDEY RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
4. BINIT KUMAR JAISWAL SON OF LATE TEJ BAHADUR JAISWAL RESIDENT OF VILLAGE- KILANI, P.S.- CHAND, DISTRICT- KAIMUR.
5. SURENDRA SINGH SON OF KASHI SINGH RESIDENT OF VILLAGE- KILANI, P.S.- CHAND, DISTRICT- KAIMUR.
6. SANJAY SINGH SON OF NAGINA SINGH RESIDENT OF VILLAGE AND P.S.- CHAND, DISTRICT- KAIMUR.
7. SHYAM NARAYAN SINGH SON OF LATE RAJ BAHADUR SINGH RESIDENT OF VILLAGE BHERI, P.S.- CHAND, DISTRICT- KAIMUR.
8. GURU SINGH SON OF NATHUNI SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
9. MUNUPRASAD SINGH SON OF LATE CHANDRA BHAN SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
10. BIJENDRA PRATAP SINGH SON OF LATE BAL MUKUND SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
11. SUGAN SINGH SON OF TARKESHWAR SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
12. CHANDRA BAHADUR SINGH SON OF LATE SHEO PRASAD SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
13. SANJAY SINGH SON OF LATE MOTI SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
14. BATESHWAR PANDEY SON OF LATE GAGAN PANDEY RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
15. TUNTUN SINGH SON OF RAM KUSHUN SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
16. PHASPHAS SINGH SON OF PRABHAKAR SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
17. GIRDHAR SINGH SON OF LATE BIJAY BAHADUR SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
18. MIKU SINGH SON OF GOPAL SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
19. TINU SINGH SON OF GOPAL SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.



20. BABLOO SINGH SON OF LATE MADAN SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
21. SHIV SHANKAR PRASAD GUPTA @ SHIV SHANKAR SINGH SON OF HIMPAT SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
22. DEEPAK SINGH SON OF BALESHWAR SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
23. SANTOSH SINGH SON OF LATE KASHI PRASAD SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
24. FEKU YADAV SON OF LATE KISHNA YADAV RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
25. BABLOO SINGH SON OF LATE GUPTESHWAR SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
26. VIJAY PRATAP SINGH SON OF AWADHESH SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
27. PREM NARAYAN SINGH SON OF LATE RAM JANAM SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
28. PARMA NAND SINGH SON OF LATE BALIRAM SINGH RESIDENT OF VILLAGE AND P.S. CHAND, DISTRICT- KAIMUR.
29. RADHESHYAM SINGH SON OF LATE DARBARI SINGH RESIDENT OF VILL.- SALONJA, P.S.- CHAND, DISTRICT- KAIMUR.
30. ABHIMANYU SINGH SON OF JAGAT NARAYAN SINGH RESIDENT OF VILL.- KAKARATI, P.S.- CHAND, DISTRICT- KAIMUR.
31. MOHAN SETH SON OF LATE JOKHU SETH RESIDENT OF VILL.- AMAON, P.S.- CHAINPUR, DISTRICT- KAIMUR.
32. UDAY SINGH SON OF LATE JAMUNA SINGH RESIDENT OF VILL.- PIPARIYA, P.S.- CHAND, DISTRICT- KAIMUR.
33. AMIT RANJAN SINGH SON OF BHOLA SINGH RESIDENT OF VILL.- BAIRI, P.S.- CHAND, DISTRICT- KAIMUR.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. K.N. Chaubey, Adv, Mr. Prashant Kumar, Adv,
Mr. Animesh Kumar, Adv and Ms. Ritu Priyadarshini, Adv
For the Opposite Party/s : Mr. M.DAYAL (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT



Date : 31-01-2018

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 31.07.2013 taking cognizance under Sections 147, 148, 149, 353, 337, 304 and 120B of the Indian Penal Code passed by the learned Judicial Magistrate, 1st Class, Bhabhua in Complaint Case No. 753 of 2011(G.R. No. 119 of 2006/ Tr. No. 3331 of 2013) arising out of Chand P.S. Case No. 07 of 2006 dated 31.01.2006.

Briefly stated, the facts of the case is that in the night of 29/30.01.2006, theft took place in jewellery shop of one Mohan Seth in the local Chand Market which was near Chand Police Station, in which the thieves took away all the gold and silver jewellery as well as cash from the said shop. An FIR bearing Chand P.S Case No. 06 of 2006 was registered by the police against the unknown persons on the written information of the shop owner. After registration of FIR no progress was made in investigation in order to trace out the culprits which caused resentment among local people against the functioning of the local police and they started demanding proper investigation of the case.

On 31.01.2006, thousands of local people



gathered in front of the Chand Police Station to protest against the inaction of the police in respect of investigation of Chand P.S. Case No. 6 of 2006 and raised slogans against the local police. The police thereafter tried to disperse the assembly by use of force upon which altercation took place between the police and local people, thereafter police resorted to firing upon the order of the S.D.P.O. Bhabhua resulting in death of two persons. Two FIRs were registered on the same date i.e. on 31.01.2006 one bearing Chand P.S. Case No. 7 of 2006, which was instituted by the police under Sections 147, 148, 149, 353, 323, 324, 307 and 283 of the Indian Penal Code and Section 27 of the Arms Act against "unknown violent crowd numbering thousands" on written information of the then Sub Inspector of Chand P.S. namely, Kameshwar Prasad. Another FIR bearing Chand P.S. Case No. 08 of 2006 dated 31.01.2006 was registered under Section 302 and 34 of the Indian Penal Code on the written information of the informant Pheku Yadav-petitioner no. 24, against the then S.D.P.O. Bhabhua namely Raman Kumar Choudhary and other unknown police personnels.

The prosecution story as per FIR bearing Chand P.S. Case No. 07 of 2006, out of which the instant case arises,



is that in the morning of 31.01.2006 at about 9:00 am village people numbering in thousands assembled and blocked the Bhabhua-Gharauli main road and started raising slogan against the local police, protesting against the theft in jewellery shop in the night of 29/30.01.2006 and improper investigation by local police. The informant alongwith local police of Chand P.S. tried to pacify the matter but the crowd did not pay any heed and started to quarrel with the informant and other police personnel. The informant informed the S.D.P.O. Bhabhua to come on the spot along with police force. The police tried to disperse the crowd by resorting to Lathi charge and crowd became violent and started pelting stones on the police personnel. Thereafter, on the orders given by the S.D.P.O. Bhabhua the police resorted to open blank firing, and two persons were shot in the firing one of which died on the spot and the other died on the way to the hospital. Chand P.S. Case No. 08 of 2006 was registered against the S.D.P.O. Bhabhua and other police personnel by informant petitioner no. 24 as his son was killed in police firing. Allegation of murder was levelled on the then S.D.P.O. Bhabhua and other police personnel by the informant and it was alleged by the informant that his son



was killed and police deliberately fired on the peaceful crowd which was retreating without any warning on the orders given by the S.D.P.O. Bhabhua and the two persons were killed and several got injured and the S.D.P.O. Bhabhua also fired on the crowd.

The police started investigation which was later on clubbed together. In police investigation after all the efforts of the police the names of the guilty persons of the alleged offences as per FIR bearing Chand P.S. Case no. 7 of 2006 could not be revealed nor the police could find any evidence of any witness against the persons involved in the offences for which Chand P.S. Case No. 7 of 2006 was instituted. At no stage in the police investigation, the names of the petitioners appeared as the persons guilty of the alleged offence and the police finally submitted Final Form No. 43 of 2009 dated 02.06.2009. In the investigation in respect of Chand P.S. Case No. 08 of 2009, the investigating officer found that the concerned officer in charge of the Chand P.S. and the then S.D.P.O. were careless and negligent in managing/handling the situation and the concerned S.D.P.O. was thereafter suspended also and a departmental proceeding was initiated against him.



After completion of investigation in respect of Chand P.S. Case No. 08 of 2009 the investigating officer, submitted final form in Chand P.S. Case No. 8 of 2009 vide Final Form No. 44 of 2009 dated 02.06.2009 as mistake of fact.

The informant of Chand P.S. Case No. 08 of 2006 (petitioner no. 24 herein) filed a protest petition against the police investigation on 24.02.2006 and also on 03.06.2010 before the Chief Judicial Magistrate, Bhabhua, thereby giving names of some of the policemen involved in the incident when their names/identity were established. Some of the petitioners herein were the witnesses in the protest petition which was converted into complaint case bearing complaint Case No. 700 of 2010 G.R. No. 116 of 2006/ Tr. No. 2276 of 2013) by the learned Court below.

The learned Judicial Magistrate, 1st Class, Kaimur (Bhabhua) took cognizance of the offences punishable under Sections 323, 302 and 120B of the Indian Penal Code against named policemen in Complaint Case No. 700 of 2010 arising out of Chand P.S. Case No. 8 of 2006 vide order dated 12.05.2011. The anticipatory bail petition of concerned S.D.P.O. Bhabhua was dismissed by the High



Court and quashing application filed on behalf of the S.D.P.O. Bhabhua was also dismissed. Thereafter a fresh anticipatory bail petition was also dismissed by Sessions Court and High Court as well as the Apex Court.

After the learned court below took cognizance of the offence on 12.05.2011 against the named police personnel in Complaint Case No. 700 of 2010, the informant of Chand P.S. Case No. 07 of 2006 namely Kameshwar Singh filed a protest petition on 14.06.2011 against the police investigation and final form No. 43 of 2009 dated 02.06.2009, stating therein that the police has not properly investigated the case and for the first time, brought the names of the petitioners, some of whom are witnesses in complaint case who committed the offence as alleged in Chand P.S. Case No. 7 of 2006. The above protest petition dated 14.06.2011 was accepted by the learned C.J.M. Bhabhua and converted into complaint Case No. 753 of 2011. On 31.07.2011 in most mechanical manner and without application of mind and without any evidence whatsoever showing the involvement of the petitioners in the alleged offences, the learned court below took cognizance of the offences punishable under Sections 147, 148, 149, 353, 337, 304 and 120B of the Indian



Penal Code against the petitioners and issued summons for their appearance to face the trial.

The trial court while taking cognizance of the offence has to look into all materials available on record. The trial court has accepted the final form submitted by the police and has taken cognizance of the offence on the basis of protest and statement made by enquiry witnesses.

The Apex Court in the case of **Kishore Kumar Gyanchandani vs. G.D. Mehrotra and Anr** since reported in **(2011) 15 SCC 513**, has upheld the power of trial court to take cognizance on the basis of protest/complaint petition after accepting the closure report submitted by police. The relevant paragraph no. 6 is extracted below:-

"It is too well settled that when police after investigation files a final form under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201 of the Code and takes cognizance if the



materials produced by the complainant make out an offence. This question has been raised and answered by this Court in the case of Gopal Vijay Verma v. Bhuneshwar Prasad Sinha and Ors.: (1982)3SCC510 whereunder the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding."

However, such liberty is available to citizens of State and not the state itself. In the present case, informant is the police officer and he was the investigating officer also and after completing the investigation, he submitted a closure report which was accepted by the court below. After cognizance was taken by the court below on the basis of protest petition/complaint petition filed by informant (petitioner no. 24) in Chand P.S. Case No. 8 of 2006 in retaliation informant/investigating officer filed protest petition in Chand P.S. Case No. 7 of 2006 against his own investigation and the court below took cognizance on such protest/complaint petition which cannot be said to be permissible when State is the informant and case is investigated by a police personnel and after investigation it



submitted a closure report and the same been accepted by the court he cannot be permitted to file protest petition/complaint petition against his own investigation.

As a result the petition is allowed and order taking cognizance is set aside. However, power of police for further investigation in the case after obtaining permission of court on the basis of any fresh disclosure or fresh evidence cannot be taken away.

The petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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