

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.580 of 2015

Arising Out of PS.Case No. -1510 Year- 2012 Thana -NAWADAH COMPLAINT CASE District-
NAWADA

- =====
1. Md. Saifur Rahman, Dy. S.P. Rajauli, son of late Shamsul Haque, resident of village- Banwaripur, P.S.- Bhagwanpur, District- Begusarai, at present posted as S.D.P.O., Rajauli, P.S.- Rajauli, District- Nawada
 2. Shiv Kumar Raut, Son of Sri Ram Lakhan Raut, r/o Arti Enclave, Near Anisabad Telephone Exchange, P.S. Beur, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Mohan Chaudhary, son of late Dasharath Chaudhary, r/o Akabarpur, P.S.- Akbarpur, District- Nawada

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Naresh Dikshit, Advocate.
For the State : Dr. Rabindra Kumar, A.P.P.
For the Opposite Party No. 2 : Mr. Sunil Kumar, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 27-07-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 5.5.2014 passed by the learned Chief Judicial Magistrate, Nawada, in Complaint Case No. 1510 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and other accused persons for the offences under Sections 304, 307, 427 and 149 of the Indian Penal Code.

2. Heard learned counsel for the petitioners, learned counsel for the complainant opposite party No. 2 and learned counsel for the State.



3. Learned counsel for the petitioners has submitted that for the same date of occurrence another case was lodged by the Circle Officer vide Akbarpur P.S. Case No. 231 of 2012. The Government thereafter accorded sanction for prosecution under Section 153A/295A of the Indian Penal Code. The name of the complainant in the instant case also finds place at Sl. No. 25 of the said sanction order in the column of accused person of that case. It has further been submitted that one Navin Kumar Akela, uncle of Gauri Shankar (Since deceased) lodged case on 26.10.2012 vide Akbarpur P.S. Case No. 232 of 2012 against unknown persons for the offence under Sections 147, 148, 304, 326 of the Indian Penal Code and Section 27 of the Arms Act. The police submitted Final Form No. 279 of 2014 on 31.10.2014 in that case stating the case as mistake of fact, copy of which has been enclosed as Annexure-3.

4. Learned counsel for the petitioners has submitted that police after investigation found the case of Akbarpur P.S. Case No. 231 of 2012 true and submitted charge sheet against 38 accused persons including complainant of the instant case.

5. Learned counsel for the petitioners has submitted that the instant case has been filed by the complainant on 16.11.2012 levelling false allegation to implicate the petitioners. It has further been submitted that petitioners were discharging official duty and



therefore, sanction under Section 197 Cr. P.C. was also required.

6. Learned counsel for the opposite party No. 2 has submitted that Akbarpur P.S. Case No. 231 of 2012 has been filed by the Circle Officer on 26.10.2012 just to make defence. Due to high handedness of the petitioners and firing made by them without any reason, several persons sustained injury and one Gauri Shankar, uncle of Navin Kumar Akela died on the spot. The counsel for the opposite party No. 2 further submits that Akbarpur P.S. Case No. 232 of 2012 was filed on 26.10.2012 on the basis of *Fard-e-beyan* of Navin Kumar Akela who is said to be the nephew of the deceased Gauri Shankar. The final form in that case has been submitted by the police as mistake of fact just after five days of filing of the case i.e. on 31.10.2014.

7. Learned counsel for the opposite party No. 2 further submits that in the complaint petition there is specific allegation that the complainant and other *Thela* pullers and *Rikshaw* pullers were brutally assaulted with *lathi*, *danda*, etc. by the petitioners without any valid reason. Firing was also made by the petitioners in which several persons sustained injuries and one person namely, Gauri Shankar died on spot as mentioned in the complaint petition.

8. During enquiry under Section 202 Cr. P.C. total 16



witnesses were examined. All the witnesses in their statement have supported the case of the complainant. The complainant has also supported the case in his Solemn Affirmation.

9. The court below after looking into the Solemn Affirmation of the complainant, allegation in the complaint petition and statement of witnesses, found *prima facie* case against the petitioners. The court below has mentioned in the impugned order that sanction is required when any overt act is done by public servant while discharging his official duty. The learned Magistrate has mentioned in the impugned order that sanction order is not essentially required at this stage. The learned Magistrate has accordingly found *prima facie* case against the petitioners under Sections 304, 307, 427 and 149 of the Indian Penal Code.

10. In this manner, from the facts stated above, it appears that for the same date of occurrence three cases have been filed. First case has been filed by Circle Officer vide Akbarpur P.S. Case No. 231 of 2012 in which charge sheet has been submitted by the police against 38 accused persons including the complainant. Second case is alleged to have been filed by Navin Kumar Akela, nephew of the deceased Gauri Shankar vide Akbarpur P.S. Case No. 232 of 2012, copy of which, has been enclosed as Annexure-5 in which police has submitted final form as mistake of fact. Thereafter,



third case has been filed by the complainant in which the court below after holding enquiry and looking into the statement of 16 witnesses recorded during enquiry and also Solemn Affirmation of the complainant, has found *prima facie* case against the petitioners. From the allegation made in the complaint petition it is apparent that petitioners have committed overt act. They have made unprovoked firing causing injury to several persons and one person namely Gauri Shankar succumbed to the injury on the spot.

11. Therefore, in such circumstances, this Court at this stage is not inclined to interfere with the impugned order passed by the court below.

12. This Criminal Miscellaneous application is accordingly dismissed.

13. The petitioners are given liberty to take the point that they have done the occurrence while discharging official duty as public servant at the time of occurrence and other points as raised in this petition at the time of framing of charge which shall be considered by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07/08/2018
Transmission Date	07/08/2018

