

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4129 of 2015

Arising Out of PS.Case No. -23 Year- 2010 Thana -UDAKISHANGANJ District- MADHEPURA

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Basuki Kumar Jha @ Basuki Jha, son of Laliteshwar Jha, resident of village
Udakishunganj, P.S. Udakishunganj, District Madhepura.

.... Petitioner.

Versus

1. The State of Bihar.
2. Madan Prasad Yadav, son of Sri Arjun Prasad Yadav, resident of village
Dohatbari, P.S. Udakishunganj, District Madhepura.

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Rishit Deo Kumar Singh, Advocate.

For the State : Mr. Mukeshwar Dayal, APP

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 07-09-2018

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

2. This application under Section 482 of the Code of
Criminal Procedure has been preferred against the order dated
28.01.2011 passed by the learned Chief Judicial Magistrate,
Madhepura in Udakishunganj P.S. Case No.23 of 2010, whereby the
learned Magistrate took cognizance of the offence under Sections 147,
148, 149, 341, 342, 323, 324, 307, 379, 504 and 302 of the Indian



Penal Code against the petitioner and other eight accused persons.

3. The factual matrix of the case is that Udakishunganj P.S. Case No.22 of 2010 was instituted under Section 147, 148, 149, 323, 347, 342, 324, 307, 379, 504 and 302 IPC on the basis of fardbeyan of Madan Prasad Yadav with the allegation in succinct that on 02.03.2010 at 5:30 PM he along with his co-villager, namely, Munna Kumar Singh was proceeding to Udakishunganj Bazar on motorcycle. When he reached near main road at Durga Asthan Chowk 80-90 miscreants armed with various weapons with common intention encircled them. Sanjay Kumar, Munna Choudhary and Karia Choudhary assaulted him indiscriminately by means of hand pipe making him injured. Kishore Paswan assaulted his companion Munna Kumar Singh on his head by means of sword making him injured. When his father Arjun Yadav and brother Santosh Yadav arrived there and raised protest, Kundan Jha, Chhedi Mishra, Santosh Gupta, Navneet Kumar @ Gulo and Kunal @ Mithu Prasad Gupta armed with farsa & pipe assaulted them on their head and made them seriously injured. Resultantly his father fell senseless there. Basuki Mishra resorted his brother by means of sword inflicting head injury to him. Manoj Sah, Abhimanyu Singh, Pawan Mishra and Amit Kumar assaulted them by means of lathi and rod. Baidyanath Choudhary, Manoj Sah and Dipak Kumar took out his cash of



Rs.5300/- and mobile. There were several other accused persons in the mob.

4. The aforesaid case was investigated by the police and on conclusion of the investigation the I.O. submitted chargesheet under Sections 147, 148, 149, 341, 342, 323, 324, 307, 379, 504 and 302 of the Indian Penal Code against the petitioner and eight other accused persons.

5. On perusing the chargesheet and case diary, the learned Magistrate took cognizance of the offence under Sections 147, 148, 149, 341, 342, 323, 324, 307, 379, 504 and 302 of the Indian Penal Code against nine accused persons including the petitioner.

6. Being aggrieved and dissatisfied with the cognizance order, as detailed in earlier paragraph, the petitioner has preferred this application.

7. It is submitted by learned counsel for the petitioner that the petitioner is not named in the F.I.R. instead one Basuki Mishra is the named accused. All the independent witnesses examined by the I.O. during the course of investigation have not named the petitioner. The petitioner appeared and surrendered before the learned C.J.M. but the learned C.J.M. refused to remand him finding his name not mentioned in the F.I.R. Hence, no prima facie case is made out against him. However, the Superintendent of Police in his supervision



note without any basis and material on record implicated the petitioner in the occurrence. Hence taking cognizance against the petitioner is nothing but abuse of process of Law.

8. On the other hand, learned APP for the state vehemently opposing the prayer of the petitioner submitted that during the course of investigation number of witnesses in para-58, 59 & 60 have taken name of the petitioner in the occurrence and finding the complicity of the petitioner in the occurrence the I.O. has submitted chargesheet against the petitioner as well. He has further submitted that the learned Magistrate has rightly taken cognizance against the accused persons including the petitioner finding prima facie case against them. At the time of taking cognizance the court is required to consider only prima facie case and not to examine the pros and cons of the case meticulously. Hence, the order of cognizance passed by the learned Magistrate is liable to be upheld.

10. From perusal of the record, it appears that the F.I.R. has been lodged against the named 22 and 60 unknown miscreants under Section 302 and other allied sections of the Indian Penal Code. The aforesaid case was investigated by the police. During the course of investigation independent witnesses in para-58, 59, 60 and 101 have unanimously named the petitioner as the person involved in the occurrence and after investigation of the case and finding the



complicity of the petitioner in the occurrence, the I.O. submitted chargesheet and accordingly cognizance was taken by the C.J.M. against the petitioner as well.

11. From perusal of the record, I find prima face case made out against the petitioner as well. At the time of taking cognizance, the Court is required to see only the prima faice case and not to examine the pros and cons of the case meticulously. The cognizance can be taken even on the strong suspicion against the accused.

12. In view of the facts and circumstances of the case, I do not find any impropriety and illegality in the impugned order of cognizance passed by learned C.J.M. Accordingly this application is dismissed. However, the petitioner may take proper recourse of law as advised.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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