

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17891 of 2012

Arising Out of PS. Case No.-28 Year-2007 Thana- NARDIGANJ District- Nawada

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Azad Yadav S/O Ram Baran Yadav, Resident of Babhnauli, P.S.- Nardiganj,
Dist.- Nawada

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ram Deo Yadav S/o Sri Prasadi Yadav Resident of Babhnauli, P.S.-
Nardiganj, Dist.- Nawada

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 06-03-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. Learned counsel for the petitioner is permitted to
make necessary correction in paragraph no. 1 of the application
with regard to the date of the impugned order. Let the same be
done during the course of the day.

3. Despite valid service of notice on opposite party no. 2
and him entering appearance and also name of learned counsel
appearing in the cause list, nobody was present when the matter
was taken up and heard.

4. Even yesterday, the matter was taken up but because
name of learned counsel for the opposite party no. 2 was not



appearing in the cause list, the Court had adjourned the case with a direction to the Registry to print the name of Mr. Durgesh Nandan, learned counsel in the column of the opposite parties. Today, in the cause list, name of Mr. Durgesh Nandan, learned counsel is printed.

5. Learned counsel for the petitioner submitted that he himself had informed Mr. Durgesh Nandan, learned counsel with regard to the present case. The Court finds the situation to be very unfortunate. When any learned counsel enters appearance, it is his duty, both towards his client and towards the Court, to ensure that he is present or somebody is present on his behalf when the matter is taken up. It is the obligation and duty of the learned counsel once he has accepted power on behalf of any party. Thus, the Court finds that non-appearance of learned counsel or anyone on his behalf is clearly against the solemn obligation on the learned counsel when he accepts power on behalf of any party.

6. Be that as it may, the Court would not make any further comment on the issue.

7. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“That this is application for quashing the order dated 23.1.12 passed in Nadariganj P.S. Case No. 28/07 Tr. No. 135, u/s 302 I.P.C. and 27 Arms Act and the



summan dated 23.1.12 by learned C.J.M., Nawada by which order the learned court, has issued notice/summan against the petitioner.”

8. The brother of the opposite party no. 2 was shot dead and for which Nardiganj P.S. Case No. 28 of 2007 was instituted on 13.05.2007. Co-accused Bhushan Chauhan was named accused. However, charge-sheet was submitted against the petitioner and Bhushan Chauhan but the Court below took cognizance and issued summons only to co-accused Bhushan Chauhan by order dated 26.06.2008. The opposite party no. 2, being the informant, moved this Court in Criminal Revision No. 770 of 2009 being aggrieved by the order not summoning the petitioner. The same was disposed off by order dated 11.08.2011 by which the Court below was directed to consider the materials available on record for considering whether there was material against the petitioner. Such exercise has resulted in order dated 23.01.2012 by which process has been issued against the petitioner.

9. Learned counsel for the petitioner submitted that during the entire investigation by the police no material has come with regard to the complicity of the petitioner. It was submitted that even the informant himself, who was not an eye witness, had stated in the F.I.R. that he was told by persons who had supposedly seen the crime that it was the co-accused Bhushan Chauhan who



had shot the deceased. Learned counsel submitted that later on the informant filed a petition before the police that even the petitioner was party to the crime but without any supporting evidence or material. Learned counsel submitted that based on this solitary suspicion expressed by the informant, and that too, at a belated stage and without any other witness supporting the same, the Deputy Superintendent of Police and Superintendent of Police have also approved the submission of charge-sheet against the petitioner. Learned counsel submitted that initially when the Court had taken cognizance on 26.06.2012, it was after going through the materials before it and not finding any ground to issue process against the petitioner, after taking cognizance, the same was done only against co-accused Bhushan Chauhan. Learned counsel submitted that based on the same very materials, without there being any fresh investigation or input before the Court below, issuing summons against the petitioner is an abuse of the process of the Court as the same is without any basis whatsoever. It was submitted that just because the High Court had remanded the matter for fresh consideration, the Court below has acted in a mechanical manner and issued process, which is untenable in the eyes of law.



10. Learned A.P.P., upon going through the case diary, did not controvert the submissions made by learned counsel for the petitioner. It was submitted that no material has come during investigation, as reflected in the case diary, and no witness has stated about the petitioner or any role played by him in the crime.

11. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

12. Once, on the basis of materials already before the Court it had taken a conscious decision and after taking cognizance of the offence had proceeded to issue process only against co-accused Bhushan Chauhan and just because there was a remand order from the High Court, taking a fresh view, based on those very materials which were already before the Court earlier, and then issuing process against the petitioner, in the opinion of this Court, does not appear to be proper. Further, learned A.P.P. has confirmed after going through the case diary that there is no material against the petitioner, except for a bald statement by the informant that the petitioner was also involved. This statement, compared to the initial F.I.R. by the informant, in which it has categorically been stated that Bhushan Chauhan was the person who had shot the deceased and whom witnesses had seen, which



was subsequently corroborated by the witness also during investigation by the police, but none of them saying anything about the petitioner, clearly, it can be said that no material exists to justify the petitioner having to face trial.

13. For reasons aforesaid, the application is allowed. The order dated 23.01.2012 passed in Nardiganj P.S. Case No. 28 of 2007 (Tr. No. 135 of 2011) by which summons have been issued against the petitioner stands quashed.

14. The case diary be returned forthwith.

(Ahsanuddin Amanullah, J)

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