

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7128 of 2015

Arising Out of PS. Case No.-58 Year-2007 Thana- TARIYANI CHOWK District- Sheohar

Rakesh Kumar Singh, son of Sri Nand Kishore Singh, resident of Village-
Dumra, P.S.- Belsand, District- Sitamarhi.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anuj Kumar, Advocate

For the Opposite Party/s : Mr.Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 25-06-2019

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

2. The petitioner has prayed for quashment of order of cognizance dated 28.11.2011, passed in Tariyani Police Station Case No.58 of 2007, registered for the offences under Sections 302 and 120B of the Indian Penal Code as well as under Section 27 of the Arms Act.

3. According to F.I.R., the informant suspected that the F.I.R. named three accused persons, namely, *Umesh Singh*, *Dilip Singh* and *Anil Singh* might have committed murder of his son, namely, *Chandra Bhushan Singh @ Ashok Singh* by causing firearm injury. The suspicion is based on some previous dispute between *Umesh Singh* and the informant.



4. The F.I.R. was lodged on 28.04.2007 for the occurrence dated 27.04.2007. After four years of the occurrence, the Police recorded statement of two witnesses on 21.06.2011. Those witnesses, namely, *Arvind Singh* and *Ram Babu Singh* stated that on the date of occurrence, when they were passing through the place of occurrence on their respective motorcycles, they saw that the deceased and this petitioner were quarreling. When they proceeded to their way, they heard sound of firing and in the next morning they got information that murder of *Chandra Bhushan Singh* has been committed by causing firearm injury. On that statement, the petitioner was booked in the case and the F.I.R. named accused persons were exonerated.

5. Learned counsel for the petitioner submits that if the witnesses whose statements were recorded after four years of the occurrence would have seen the quarrel between the two and would have heard the sound of firing, they must have disclosed to the informant or any other person as soon as they came to know about the murder of *Chandra Bhushan Singh*. This is a case of abuse of power by the Police in exonerating the named accused and falsely implicating the petitioner, though witnesses, *Arvind Singh* and *Ram Babu Singh* are not witnesses of actual occurrence of murder. Submission is that the order of cognizance



is a serious exercise of judicial power and the learned Magistrate in casual manner recorded that there is material in the case diary against the petitioner and accordingly took cognizance against the petitioner.

6. His contention is that if such irresponsible and casual witnesses are allowed to be relied upon, who have come before the Police after delay of four years of the occurrence, it would open a pandora gate that after so many years anyone can appear before the Police to say that he has witnessed the occurrence. This Court should not be a silent spectator of the abuse of the process of law, especially when the father of the deceased has no doubt against the petitioner.

7. Learned counsel for the State submits that impugned order is based on material on the record and if, the order of cognizance is consistent with the Police report submitted under Section 173 of the Code of Criminal Procedure, it is not necessary that it should be a detailed or speaking order, discussing all the evidences against the petitioner.

8. The law is well settled that the judicial process should not be merely an instrument for harassment and oppression. If the court is satisfied that the judicial process is a vexatious one just to harass and humiliate the accused, it has got



ample power under Section 482 of the Code of Criminal Procedure to quash the proceeding.

9. In this case, no material came against the petitioner either in the First Information Report or at the earliest stage of investigation. The nature of material which came after four years, as discussed above, does not inspire confidence of the court that in fact they were witnesses of the occurrence, otherwise they must have disclosed at the earliest opportunities at least within few days of the knowledge of the murder. Apparently, prosecution of the petitioner would amount to abuse of the process of the court. Hence, it cannot be allowed. Accordingly, the impugned order and the entire criminal prosecution against the petitioner stands *quashed* and this application stands *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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