

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6806 of 2015

Arising Out of PS. Case No.-38 Year-2014 Thana- MURLIGANJ District- Madhepura

Brahmdeo Yadav, Son of Late Dhanik Lal Yadav. Resident of Village-
Morkahi, P.S.- Simri Bakhtiarapur (O.P. Balwahat), District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ashutosh Kumar Son of Jay Kishore Yadav
3. Jay Kishore Yadav Son of Late Chamaklal Yadav
4. Chandra Mukhi Devi Wife of Jay Kishore Yadav. All residents of Village-
Khari Tola Rahta, P.S.- Murliganj, District- Madhepura.
5. Baby Devi Wife of Ravindra Yadav
6. Ravindra Yadav Son of Shyam Sundar Yadav. Both residents of Village-
Barahi, P.S.- Udakishunganj, District- Madhepura.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Bibhakar Tiwary, Advocate
For the State	:	Mr.Ajay Kumar No.1A.P.P.
For the Opposite Parties	:	Mr.Uday Chand Prasad, Advocate Mr.Manoj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-06-2019

Heard learned counsel for the petitioner and counsel
for the opposite parties.

2. Petitioner is informant of Muraliganj Police Station
Case No.38 of 2014, registered under Sections 323, 304, 306,
304 (B), 498 (A)/34 of the Indian Penal Code and Section 3/4 of
the Dowry Prohibition Act.



3. Opposite Party Nos.2 to 6 are named accused along with co-accused, *Santosh Kumar*, who was husband of the victim.

4. After investigation of the case, the Police submitted charge sheet No.193 of 2014 dated 20.10.2014, only against the husband of the deceased, namely, *Santos Kumar* and did not sent up opposite party Nos.2 to 6 for trial.

5. By the impugned order dated 01.11.2014, the learned court below accepted the charge sheet against accused, *Santosh Kumar* as well as final form not sending up opposite party Nos.2 to 6 for trial.

6. Contention of the petitioner is that once the court below decided to accept the final form against opposite party Nos.2 to 6, it was duty bound to give notice to the petitioner. Reliance has been placed on a Division Bench judgment of this Court in *Sintu Yadav versus The State of Bihar*, reported in **2017 (1) P.L.J.R., Page 363**.

7. In para 7 of this application, the petitioner has stated on oath that the learned Magistrate did not issue notice to the petitioner before accepting the final form against opposite party Nos.2 to 6.



8. Learned counsel for the opposite party Nos.2 to 6 submits that there is no specific allegation against the opposite party Nos.2 to 6, rather material has come during investigation that the victim died of illness and lack of proper treatment of the deceased was cause of death.

9. Para 28 and 29 of the judgment in *Sintu Yadav's* case reads as follows:-

28. To put it a little differently, but explicitly, the position of law is thus: If, in a given case, the First Information Report names more than one person as accused and the police submits charge sheet only against one or some of them, the Magistrate is duty bound to give a notice to the informant before accepting such a report of exoneration of those persons, who were named as accused, in the First Information Report, by the informant, but the 'police report' indicates no material having been found against them. Independent of the objection raised by an informant, the Magistrate has the duty to apply his mind to the facts of every given case and determine whether or not a 'final report' or 'charge sheet' or a partly final report, which exonerates some of the accused, shall or shall not be accepted in its entirety.

29. Situated thus, it becomes abundantly clear that if the Magistrate, upon hearing the informant, decides to accept the 'final report' or a 'charge sheet', which exonerates some of the persons named as accused in the First Information Report, it is necessary that the Magistrate records the reasons, in writing, so that the correctness of the reasons, for taking such a decision, can, if necessary, be examined by the superior court.

10. Thus, the binding law is that the Magistrate is bound to issue notice to the informant, when it decided to accept the final form against some of the accused, who are named in the



F.I.R. After notice to the informant, the Magistrate may not agree with the submission advanced by the informant provided that the disagreement of the Magistrate is supported by material on record.

11. Apparently, the court below has acted with material irregularity, which has resulted in failure of justice. Hence, the impugned order is, hereby, *set aside* and the matter is remitted back to the court below to pass order, according to law, in respect of opposite party Nos.2 to 6 only.

Accordingly, this application stands *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	25.06.2019
Transmission Date	25.06.2019

