

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.501 of 2019

Arising Out of PS. Case No.-8 Year-2018 Thana- BELAGANJ District- Gaya

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1. Lallu Khan
 2. Guddu Khan, both are sons of Late Samsuddin Khan, Resident of Village - Agtaoo Kanchanpur, P.S.- Balaganj, Distt - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar.
2. The Director General of Police, Government of Bihar, Patna.
3. The Superintendent of Police, Gaya.
4. The Deputy Superintendent of Police, Gaya.
5. The Investigating Officer of Belaganj P.S. Case No. 08/2018, Belaganj Police Station, Distt – Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr, Yogesh Chandra Verma, Senior Advocate Mr. Javed Aslam, Advocate
For the Respondent/s	:	Mr. Anil Kumar, AC to SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 15-03-2019

Heard Mr. Yogesh Chandra Verma, learned senior advocate for the petitioners and Mr. Anil Kumar, learned counsel for the State.

2. This application under Article 226 of the Constitution of India has been filed by the petitioners for quashing the First Information Report (for short 'FIR') of Belaganj P.S. Case No.8 of 2018 instituted for the offences punishable *inter alia* under Sections 302 of the Indian Penal Code, 27 of the Arms Act and different provisions under the Scheduled Castes and Scheduled



Tribes (Prevention of Atrocities) Act. An alternative prayer has also been made by the petitioners to direct the respondents to investigate the case from the angle that the informant is a fake lady and not the wife of late Vinod Paswan.

3. Mr. Yogegh Chandra Verma, learned senior advocate appearing for the petitioners submitted that the police have acted illegally in instituting the FIR under Section 154 of the Code of Criminal Procedure on the basis of a report given by a fake lady, who is not the wife of the deceased Vinod Paswan. He contended that the petitioners are absolutely innocent and with ulterior motive, their names have been given by the informant in the FIR. He submitted that in an investigation on the basis of such a malicious FIR is bad in law.

4. *Per contra*, learned counsel appearing for the State submitted that the submission made by the learned senior advocate for the petitioners are totally misconceived. He submitted that there is no dispute that on the alleged date of occurrence, i.e. in the night intervening between the 14th and 15th January, 2018, one Vinod Paswan, Up-Mukhiya of Agthoo Panchayat was killed in his house. The allegation made in the FIR attracts ingredients of a cognizable offence. Hence, there is no illegality in institution of the FIR. The defence being taken by the accused at this stage can



not be looked into or assessed by the Court for the purpose of quashing the FIR.

5. Having heard learned counsel for the parties and perused the FIR, I find that in the fardbeyan, the informant Kaushali Devi has stated that at the relevant time she, being the wife of the deceased was inside the house along with her children and in her presence, the petitioners and one Rizu Khan scaled over the boundary wall and entered into the house. They were armed with pistol. The petitioner no. 2 and Rizu Khan pointing pistol on her head dragged and abused her. In the meantime, her husband, who was sleeping inside the room along with children came out. Immediately, thereafter, petitioner no. 2 exhorted to kill him. On his exhortion, petitioner no. 1 opened fire from pistol from a close range causing injury in the neck of her husband Vinod Paswan, as a result of which, he fell down. On hue and cry, several persons assembled there. The injured Vinod Paswan was taken to hospital, but in the morning, at about 3:00 a.m., on 15.01.2018 itself, the doctor declared him brought dead.

6. The FIR relates to gruesome murder of the husband of the informant. It requires a sensitive and committed investigation. It is well settled position in law that to hold investigation into a cognizable offence is the statutory right of the



police. Since information regarding the cognizable offence had been given by the informant, no illegality can be found either with the institution of the FIR or its investigation.

7. The submissions made by the learned senior advocate for the petitioners are in the nature of defence on behalf of the accused persons named in the FIR. The defence of the accused persons cannot be a ground for quashing the FIR. The alternative prayer made by the petitioners is also misconceived.

8. In a criminal case, for the purposes of quashing the FIR, this Court would not go into the question of legality of marriage of the informant with the deceased. Furthermore, the bona fide of the FIR or the bona fide of the informant are the subject matter of investigation.

9. In view of the discussions made above, the application being meritless, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.03.2019
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