

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25472 of 2019

Arising Out of PS. Case No.-274 Year-2017 Thana- NAUBATPUR District- Patna

1. Ashok Yadav @ Ashoshk Son of Kanta Yadav Resident of Village- Bala Thakur, P.S.- Naubatpur, District- Patna.
2. Birju Yadav Son of Ram Anuj Rai Resident of Village- Bala Thakur, P.S.- Naubatpur, District- Patna.
3. Vinod Yadav Son of Ram Babu Yadav Resident of Village- Bala Thakur, P.S.- Naubatpur, District- Patna.
4. Mithilesh Yadav Son of Subhash Yadav Resident of Village- Bala Thakur, P.S.- Naubatpur, District- Patna.
5. Sanjay Yadav Son of Late Devendra Yadav Resident of Village- Bala Thakur, P.S.- Naubatpur, District- Patna.
6. Bhola Yadav Son of Late Ram Anuj Yadav Resident of Village- Bala Thakur, P.S.- Naubatpur, District- Patna.
7. Mukesh Yadav Son of Girja Yadav Resident of Village- Bala Thakur, P.S.- Naubatpur, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kamlesh Prasad Yadav
For the Opposite Party/s : Mr.Amit Kumar Rakesh

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 16-05-2019

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

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 03.07.2018 passed by learned A.C.J.M.-II, Danapur in Naubatpur P.S. Case No. 274 of 2017 whereby the learned Magistrate has taken cognizance of the offence under Sections



147, 148, 149, 323, 324, 325, 326, 307, 302, 504, 506 and 120(B) of the Indian Penal Code and Section 27 of the Arms Act against the petitioners and one another accused.

3. Factual matrix of the case is that Naubatpur P.S. Case No. 274 of 2017 was instituted against Birju Yadav, Mithlesh Yadav, Binod Yadav, Rajaram Yadav, Ashok Yadav, Mukesh Yadav, Sanjay Yadav and Hridaya Yadav on the basis of the written report of one Nandlal Prasad, S/o Late Dodha Yadav with the allegation in succinct that at the time of occurrence while the informant, his son and his nephew were regressing to their house from their field, on the exhortation of Birju Yadav and Mithlesh Yadav to eliminate them, Binod Yadav by means of garasa, Rajaram Yadav and Ashok Yadav by means of farsa, Mukesh Yadav and Sanjay Yadav by means of pistol assaulted them. Hridaya Yadav assaulted them by means of sword inflicting injury on the neck and chest of his son namely Ravi Shekhar which proved fatal. They also inflicted injury on the head of his nephew namely Subodh and Sudhir.

4. Aforesaid case was investigated by the police and after investigation of the case, I.O. submitted chargesheet against unnamed accused persons namely Bhola Yadav and Nanhe Yadav under Sections 147, 148, 149, 323, 324, 325, 326,



307, 302, 504, 506 and 120B of the Indian Penal Code and Section 27 of the Arms Act keeping investigation pending against named accused persons including the petitioners. But learned lower court receiving the chargesheet and the case diary and perusing the case diary took cognizance of the offence under aforesaid Sections against all the accused persons including the petitioners against whom investigation was kept pending.

5. It is submitted by learned counsel for the petitioners that that police has not submitted any chargesheet against the petitioners rather kept the investigation pending against them and only submitted chargesheet against unnamed accused persons namely Bhola Yadav and Nanhe Yadav. As there is no chargesheet against the petitioners, the cognizance could not be taken against them. But learned lower court in utter violation of the provisions of Section 190 Cr.P.C. and without any chargesheet against the petitioners took cognizance of the offence against them as well vide the impugned order which is liable to be quashed.

6. Per Contra, learned APP for the State opposed the quashing petition.

7. From perusal of the record, it appears that



chargesheet in the case has been submitted by the police after investigation of the case only against the unnamed accused persons namely Bhola Yadav and Nanhe Yadav keeping investigation pending against the named accused persons including the petitioners, but learned lower court has taken cognizance of the offence against all the accused persons including the chargesheeted accused persons and the petitioners without any chargesheet against the petitioners merely perusing evidence brought in the case diary.

8. As per the provision of Section 190 Cr.P.C., the Court may take cognizance of any offence only (a) upon receiving a complaint of facts which constitute such offence (b) upon a police report of such facts (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Aforesaid provision of law indicates that in a police case, court may take cognizance of the offence against accused only upon a police report/chargesheet and not otherwise. But as in the case under hand no chargesheet has been submitted against the petitioners rather investigation was kept pending against them, even then cognizance of the offence has been taken by the learned lower court against them in utter violation of the



aforesaid provision of law.

9. Having regard to the facts and circumstances of the case and finding committing of glaring illegality in taking cognizance of the offence under aforesaid sections against the petitioners by the learned Magistrate, aforesaid order of taking cognizance against the petitioners only is hereby quashed and this petition is accordingly allowed.

(Prakash Chandra Jaiswal, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	20.05.2019
Transmission Date	20.05.2019

