

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4617 of 2017

Arising Out of PS. Case No.-335 Year-2015 Thana- PATORI District- Samastipur

Geeta Kumari Wife of Late Subhash Rai, Resident of Village-Gadhi, P.S.-
Patori (Mohanpur O.P.), Dist.-Samastipur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar, Adv.

For the Opposite Party/s : Mr. Ram Sumiran Roy, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 20-06-2019 Heard learned counsel for the petitioner as well as
learned APP.

Petitioner who is an accused of Patori (Mohanpur O.P.) P.S. Case No.335/2015 including others has challenged the order dated 31.10.2015 whereby and whereunder petitioner along with others has been directed to face trial for an offence punishable under Sections 341, 323, 353, 385, 385, 504 of the IPC passed by the learned CJM, Samastipur.

Principal of a middle school, namely, Ashok Kumar filed written report on 14.05.2015 averring therein that while he was opening office, petitioner along with Avinash Kumar Rai came, forbidden him and directed to pay rangdari otherwise they will not allow him to open the office. They have also snatched away the keyring. Avinash Kumar Rai took out pistol and in order to save his life, the informant ran therefrom.



After registration of Patori (Mohanpur O.P.) P.S. Case No.335/2015, investigation commenced and after concluding the same, petitioner has not been sent up for trial though, co-accused Avinash Kumar Rai had but, the learned lower lower court differing therefrom summoned the petitioner along with co-accused by the order impugned, subject matter of instant petition.

In State of Hariyana & Ors. Versus Bhajan Lal & Ors reported in *1992 Supp(1) SCC 335* the Hon'ble Apex Court laid down the following criteria whereunder the prosecution is to be quashed and for better appreciation, para-102 is quoted below:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any



offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Gone through the written report as well as the case diary. From perusal thereof, it is evident that no specific allegation has been attributed against the petitioner in the written report and so far case diary is concerned, less said is better. Virtually, the police had not conducted proper mode of investigation. Be that as it may, there happens to be paucity of evidence and that being so, did not justify the order impugned



with regard to the petitioner. Consequent thereupon, the same is set aside but with regard to the petitioner only. Petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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