

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.563 of 2019

Arising Out of PS. Case No.-78 Year-2016 Thana- PATORI District- Samastipur

Surendra Rai, Son of Satrudhan Ray, Resident of Village - Madhopur, Post Office - Madhopur, P.S.- Mohanpur, O.P. (Patory), Distt - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The Collector, Samastipur.
4. The Superintendent of Police, Samastipur.
5. The Sub-Divisional Police Officer, Patory, Samastipur.
6. The S.H.O., Mohanpur (O.P.), Patory, District - Samastipur.

... .. Respondent 1st Set

7. Pinki Devi, Wife of Surendra Rai, Resident of Village - Madhopur, P.S.- Patory (Mohanpur O.P.), Distt - Samastipur.
8. Pankaj Kumar, Son of Not Known Resident of Not Known
9. Fakira Chaudhary, Son of late Dular Chaudhary, Resident of Village - Paharpur, P.S.- Jurawanpur, Distt - Vaishali.
10. Ram Udesch Chaudhary, Son of Fakira Chaudhary Resident of Village - Paharpur, P.S.- Jurawanpur, Distt - Vaishali.
11. Tufani Chaudhary, Son of Fakira Chaudhary Resident of Village - Paharpur, P.S.- Jurawanpur, Distt - Vaishali.
12. Parmanand Rai, Son of Bhagdeo Rai, Resident of Village -Madhopur, P.S.- Mohanpur O.P. (Patory), Distt - Samastipur.
13. Dharmendra Rai, Son of Parmanand Rai Resident of Village -Madhopur, P.S.- Mohanpur O.P. (Patory), Distt - Samastipur.
14. Krishna Devi Wife of Parmanand Rai, Resident of Village -Madhopur, P.S.- Mohanpur O.P. (Patory), Distt - Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Mishra, Advocate
		Mr. Ajay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Iqbal Asif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-04-2019



The instant application under Article 226 of the Constitution of India has been filed by the petitioner for issuance of a writ in the nature of mandamus commanding the respondent 1st set to prosecute respondents 2nd set for lodging false and fabricated Patory Mohanpur (O.P.) P.S. Case No.78 of 2016 inter alia under Section 302 of the Indian Penal Code.

2. The contention of the petitioner is that Patory P.S. Case No.78 of 2016 was registered against him on the basis of written report submitted by one Pinki Devi wherein she had alleged that her eight months' old baby was killed by her husband and in-laws and the body was disposed of. The investigating officer of the case submitted charge-sheet after completion of investigation against all the family members of the petitioner and the case was committed by the learned Chief Judicial Magistrate, Samastipur on 24.03.2017 whereafter charges were framed by the court of Session under Sections 147, 341, 323, 498A, 302 and 201 of the Indian Penal Code. Since the petitioner and others pleaded not guilty, they were put on trial. On completion of the trial, the trial court acquitted all the accused persons including the petitioner in Sessions Trial Nos.504 of 2016/375 of 2017/352 of 2017/166 of 2017 due to lack of evidence.



3. The contention of the petitioner is that since the petitioner and his other relatives have been acquitted of the charges, it would be in the interest of justice that the persons involved in implicating them falsely by fabricating story be prosecuted.

4. *Per contra*, learned counsel for the State submitted that no case for issuance of any direction by this court for prosecution of the members of the prosecution party is made out. The allegations made were found true in course of investigation. The informant or the witnesses have not been found guilty of giving false evidence or fabricating false evidence with intent to procure conviction of the petitioner and his relatives. It is also not the case of the petitioner that the informant or the witnesses used evidence known to be false. Simply because an order of acquittal has been recorded in favour of the petitioner and other accused persons, the informant or the prosecution witnesses cannot be prosecuted.

5. Having heard learned counsel for the parties and carefully perused the materials on record, I find substance in the submission of the learned counsel for the State.

6. Notwithstanding acquittal of the accused or the offences alleged, the informant or the witnesses cannot be



prosecuted unless it is shown that they launched false prosecution or gave false evidence deliberately. There is absolutely no material on the basis of which it can be inferred that the informant or the prosecution witnesses used any evidence in course of trial faced by the petitioner and his relatives known to be false.

7. In that view of the matter, I see no merit in this application. It is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2019
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