

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.583 of 2017

Arising Out of PS. Case No.-62 Year-2016 Thana- BARAUNI District- Begusarai

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1. Kashmiri Khatun wife of Md. Nasimuddin @ Md. Naseem.
 2. Ambiya Khatun, wife of Md. Gafur
 3. Md. Gafur @ Md. Gofur son of late Md. Raisuddin
 4. Md. Ajam son of late Md. Raisuddin.
 5. Md. Mosim @ md. Mohsin Akram son of late Md. Sharif.
 6. Md. Sadib @ Md. Sadim son of Md. Nasim
- All resident of village Ninga Paschim tola, P.S.-Barauni, District-Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Samima Khatun, wife of Md. Samad village-Ninga Paschim Tola, P.S.-Barauni, District-Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Sanjay Prasad, Adv.
For the informant	:	Mr. N.K. Agrawal, Adv.
		Dr. Abdus Shakoor, Adv.
For the State	:	Mr. Aditya Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 11-01-2019 Heard learned counsel for the petitioners as well as learned APP.

It has been submitted at the end of the petitioners that after conclusion of the investigation petitioners were not sent up for trial but, the magistrate differing therefrom, took cognizance of an offences summoned the petitioners including that of those who were charge sheeted. Apart from this, it has also been submitted that from the allegation whatever been attributed no offence under Section 307 is made out. Apart from this, it has



also been submitted that this case happens to be the counter blast of Barauni P.S. Case No.453/2015 having been instituted at the end of petitioner no.1, Kasmira Khatoon. That being so, the order impugned is fit to be set aside.

On the other hand, the learned APP opposed the prayer.

From perusal of the Annexure-2, charge sheet, it is evident that only Md. Nasim and Md. Maboob were charge sheeted for an offence punishable under Section 341, 324, 504, 34 of the IPC. It is needless to say that the Magistrate has got three options available while considering the police report submitted in accordance with Section 173 of the Cr.P.C., (a) to accept the same, (b) to differ the same, (c) to direct further investigation. In the present case, as is evident the Magistrate has differed but, the order impugned, after having close scrutiny speaks otherwise. For better appreciation the relevant portion is quoted below:

“Perused the FIR, case diary and charge sheet. As per FIR, there is an abortive attempt on the life of the informant's husband by all of the 8 accused. In view of the injury and other materials on record, cognizance of offences. U/ss- 147,149,341,323,307 I.P.C. is taken against



all of the 8 accuseds namely 1-Md. Nasim, 2-Md. Gafoor, 3-Md. Mosim, 4-Md. Azam, 5-Ambiya Khatoon, 6-Md. Sadib, 7-Md. Mahboob and 8-Kashmiri Khatoon as named in the FIR.”

So, the order impugned would have shown the presence of the materials traced out from the case diary duly collected during course of investigation at least, justifying the conclusion arrived at. That being so, the order impugned is set aside. Petition is allowed. Matter is remitted back to the learned lower court for re-appraisal of the materials and then, will pass appropriate order in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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