

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.845 of 2019**

Arising Out of PS. Case No.-48 Year-2015 Thana- GAURICHAK District- Patna

Rup Chand Prasad son of Late Bal Keshwar Prasad Resident of Village-Beldari Chak, Police Station-Gauri Chak, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jitendra Kumar son of Rajmani Prasad Resident of Village-Beldarichak, Police Station-Gaurichak District-Patna

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Anil Kumar Singh

For the Opposite Party/s : Mr.Sri Chandrasen Prasad Singh

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**ORAL JUDGMENT**

**Date : 16-12-2019**

The present petition has been filed for quashing the order dated 15.9.2017, passed in Gauri Chak P.S.Case No 48 of 2015 (GR No. 747 of 2015) instituted for the offence under Section 302/34 of the Indian Penal Code, by the learned 7<sup>th</sup> Additional Chief Judicial Magistrate, Patna City whereby and whereunder, according to the understanding of the petitioner, the learned court below has been pleased to take cognizance against the petitioner and others for the offences under Sections 147, 148, 149, 341, 323 and 302 of the Indian Penal code.

2. The brief facts of the case are that upon the written report of the informant, namely, Jitendra Kumar, the present FIR bearing Gauri Chak P.S. Case No. 48 of 2015 dated 15.3.2015



came to be registered, wherein it has been stated by the informant that on 15.3.2015, his father, namely, Raj Mani Prasad was going to irrigate onion crops while the informant was following him and at about 10:30 am., when the informant reached towards the south of the petrol pump, then he saw that his father had been surrounded by the accused persons including the petitioner herein and the accused persons were armed with iron rod, khanti, sticks etc. whereafter they had abused the father of the informant, whereupon an altercation had taken place and the accused persons had assaulted the father of the informant mercilessly. As far as the petitioner is concerned, he is stated to have assaulted the father of the informant by lathi (stick). Thereafter, upon an alarm being raised by the informant, the accused persons had also chased the informant with a view to assault him, but he hid himself. It is further alleged that the father of the informant was seriously and badly injured and while he was being taken to Patna for treatment, he died on the way.

3. The learned counsel for the petitioner has referred to the order dated 18.11.2019 passed by a coordinate Bench of this Court earlier in the present case and has submitted that a copy of the postmortem report was produced before the Court on the



said date i.e. 18.11.2019 and this Court in the said order dated 18.11.2019 had observed as follows:-

“It has been submitted that the petitioner, who is 73 years old, has been falsely implicated in this case because of dispute over construction of house over the land which is claimed by both the parties. He has further submitted and has shown to this Court from his copy of the post-mortem report which he has not annexed with the petition that the cause of death and the nature of weapon used has not been stated.

However, from a look at the post-mortem report, it appears that the deceased has not died because of any assault but for some other reason and it could be a case of natural death also. However, viscera was preserved and sent to the FSL.

The manner in which the post-mortem report has been prepared is shocking. I would normally not have taken exception to some lapse on the part of the doctor conducting autopsy, but in the present case, it appears that



the Doctor who has conducted autopsy has completely abandoned his duties or that he has no idea as to how a post-mortem report is to be written. It would not be in the interest of prosecution or for that matter, for the court if such kind of post-mortem reports are prepared.”

4. The learned counsel for the petitioner has submitted that a bare perusal of the FIR would show that a general and omnibus allegation has been levelled upon the petitioner and there is no allegation of any sort of specific overt act as against him. It is further submitted that the petitioner is aged about 73 years old and he is suffering from various diseases, hence, he is not likely to have committed the alleged crime. It is further submitted that no external injury has been found and the cause of death as also the nature of weapon used has not been stated. It is thus submitted that the materials on record would show that the deceased has died a natural death, hence, the petitioner is innocent and the learned court below by the impugned order dated 15.9.2017 has wrongly taken cognizance of the offences alleged, as against the petitioner herein.

5. At the outset, it would be relevant to state that this Court,



even as on date, does not have the benefit of perusal of the postmortem report, which was produced before a coordinate Bench of this Court on 18.11.2019, by the learned counsel for the petitioner inasmuch as admittedly, as recorded in the said order dated 18.11.2019, the same has not been annexed to the present petition and secondly, the same is nowhere available on record of the case and further, the petitioner has failed to bring it on record of the present case by way of filing supplementary affidavit, hence, this Court will have to proceed on the basis of materials available in the case diary, made available to this Court, upon being summoned by this Court earlier, and the postmortem report and FSL report annexed therewith. It is apparent from the postmortem report dated 15.3.2015 that the deceased, namely, late Raj Mani Prasad has received the following ante-mortem injuries on his person:-

1. One lacerated wound 1" x 1/2" x 1/4" found over right great toe.
2. Two abrasion over right nose above and middle 1" x 1".
3. One abrasion over sternal notch 1" x 1".

On dissection- All the viscera in general were found congested. Heart right full left empty. Stomach



contain rice undigested. Routine viscera along with spleen & heart portion preserved for chemical analysis. Brain congested 10 ml. blood mix fluid found in base of brain.

The Doctor conducting the postmortem had opined as follows:-

1. The time elapsed since death: three to eighteen hours.
2. Nature of weapon: hard blunt object
3. Cause of death: opinion reserved till chemical analysis report.

Note:- I.O. is requested to arrange for the transportation of Vicera to FSL, Patna.

"The FSL report dated 9.7.2015 furnished by the Director, Forensic Science Laboratory, Government of Bihar, Patna mentions the result of examination as follows:-

“No Metallic, Alkaloidal, Glycosidal, Pesticidal or Volatile Poison could be detected in the contents of glass jar as described above.”

6. It is apparent from the aforesaid postmortem report that the injuries were found on nose, the right great toe and upper most part of the centre of chest. All the Vicera were found



congested and the stomach contained undigested rice. In fact, 10 ml. blood mix fluid was found in the base of the brain. Further, the nature of weapon used has been stated to be hard blunt object, by the Doctor, in his postmortem report. It is thus clear that it is not a case where it can be said with conviction that the death of the deceased was a natural death inasmuch as the findings of the Doctor, arrived at in the postmortem report, leads to a prima-facie inference that the death of the deceased is not a natural death. It is also prima-facie clear from the FSL report that the case in hand is not a case of poison or that the deceased had consumed such substance, which might have led to his death.

7. Furthermore, this Court has perused the case diary and the materials available on record which definitely suggest the complicity of the petitioner in the alleged crime and a bare perusal of the supervision note submitted by the Sub-Divisional Police Officer, Sadar Patna dated 29.3.2015 would also show that the allegations levelled against the accused persons including the petitioner herein have been prima facie found to be true under Sections 147, 148, 149, 341, 323 and 302 of the Indian Penal Code, upon perusal of the inspection report of the place of occurrence, the evidence / statement of the informant



and other witnesses and the note of the Investigating Officer, recorded in the case diary. In fact, subsequently, a report no. 3 dated 18.6.2015 was received in the police station from the office of the Superintendent of Police (East) Patna wherein upon perusal of the materials on record as also taking into account the entire evidence collected during the course of investigation, the case has been found to be prima facie true as against the petitioner herein, as also against the co-accused persons, namely, Shiv Pujan Prasad and Pappu Prasad son of Bilet Prasad, under Sections 341, 323, 504 and 302/34 of the Indian Penal Code, however, it has been further stated in the said report that as far as the co-accused persons, namely, Shushila Devi, Girja Devi, Shiv Shankar Prasad, Sukhnandan Prasad and Pappu @ Raktu son of Ram Dayal Prasad are concerned, their complicity has not been corroborated during the course of investigation. It is also apparent from the impugned order dated 15.9.2017 that the police has filed a charge-sheet on 11.2.2016 bearing charge-sheet no. 14/16 dated 29.1.2016 against the petitioner herein and one other co-accused person namely Pappu Prasad, finding a prima facie case to have been made out, as against them under Sections 341, 323, 302 and 504/34 of the Indian Penal Code while showing the co-accused persons,



namely, Shushila Devi, Girja Devi, Shiv Shankar Prasad, Sukhnandan Prasad and Pappu @ Raltu, son of Ram Dayal Prasad to be innocent.

8. It is thus apparent from the materials available in the case diary as also from a bare perusal of the supervision note of the Sub-Divisional Police Officer, Patna dated 29.3.2015 and the report of the office of the Superintendent of Police (East) Patna dated 18.6.2015 that there is enough material, as against the petitioner herein, to proceed further in the matter and the complicity of the petitioner is writ large from the records. At this juncture, it would not be prudent to make a comment on the postmortem report, inasmuch as prima facie, upon a bare perusal of the postmortem report and the FSL report, attached to the case diary, no infirmity can be deciphered. Thus this Court does not find any merit in the present petition.

9. At this juncture, it would be relevant to state that it is a well settled law that at the time of cognizance, the learned court below is only required to see as to whether on the basis of materials collected during the course of investigation / enquiry, prima facie offence is made out or not, so as to proceed against the accused persons and the defence of the accused persons cannot be looked into at the stage of taking cognizance.



10. Thus, this Court is of the considered opinion that since a prima facie case is definitely made out against the petitioner herein, as is apparent from the records, the learned court below has rightly taken cognizance against the petitioner herein. This Court is of the further view that it is not the case of the petitioner that the order of cognizance is without jurisdiction or there is any technical error. The only argument which has been advanced on behalf of the petitioner is that the matter is required to be examined on merits, however, this Court is of the opinion that since the Code of Criminal Procedure itself provides certain remedies to the accused persons, order of cognizance, in absence of any illegality, jurisdictional error or perversity is not required to be interfered with, hence there is no merit in the present petition.

11. Last but not the least, it would suffice to state here that though the present petition has been filed challenging the order dated 15.9.2017 passed by the 7<sup>th</sup> Additional Chief Judicial Magistrate, Patna City by which, as per the claim of the petitioner, the learned court below has been pleased to take cognizance for the offences alleged against the petitioner herein but this Court finds, from a bare perusal of the impugned order dated 15.9.2017, that cognizance has already been taken against



the petitioner herein and other co-accused persons under Sections 147, 148, 149, 341, 323 and 302 of the Indian Penal Code by the learned court below by an earlier order dated 26.08.2015, as such in the impugned order dated 15.9.2017, the Ld. court below has rightly observed that there is no occasion for taking cognizance again for the second time. It is thus manifest that since the petitioner has not thought it prudent to challenge the order taking cognizance dated 26.08.2015, passed by the learned court below, the present petition, challenging the order dated 15.09.2017, impugned in the present proceedings, whereby and whereunder summons have only been issued against the accused persons including the petitioner herein is outrightly misconceived, hence is fit to be dismissed on this ground alone.

12. Considering the facts and circumstances of the case and the materials available in the case diary, as has also been discussed hereinabove in the preceding paragraphs, which definitely prima facie goes to show the complicity of the petitioner in the alleged crime, and for the reasons stated hereinabove, I do not find any error apparent in the impugned order dated 15.9.2017, by which the petitioner and other co-accused persons have only been summoned, after the Ld. court below



had taken cognizance for the offences alleged by an earlier order dated 26.08.2015, so as to warrant any interference, thus, the present petition stands dismissed.

**(Mohit Kumar Shah, J)**

Ajay/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 08.08.2020 |
| Transmission Date | 08.08.2020 |

