

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28717 of 2019**

**In
CRIMINAL MISCELLANEOUS No.6016 of 2019**

Arising Out of PS. Case No.-138 Year-2018 Thana- SALIMPUR District- Patna

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VIJAY SHANKAR YADAV

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Ms. Soni Srivastava, Adv.

For the Opposite Party/s : Mr. Vinod Shanker Modi, APP

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER**

3 06-11-2019 Heard learned counsel for the petitioner and the State.

The present application has been for modification of paragraph 3 of the order dated 05.02.2019, passed in Criminal Miscellaneous No. 6016 of 2019 since there was some mistake with regard to the accusation part of the FIR incorporated in paragraph 3 of the aforesaid order.

The matter was taken up on 17.7.2019 but in view of the statement in paragraph 9 of the modification application that the order under modification dated 5.2.2019 passed in Cr. Misc. No. 6016 of 2019 is under challenge in SLP (Crl.) No. 2772 of 2019 wherein notices have been issued, the modification application was directed to be listed after disposal of the aforementioned SLP.



Ms. Soni Sriviastava, learned counsel for the petitioner has produced a photo copy of the order dated 23.08.2019 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 2772 of 2019 which reflects that the SLP has been dismissed in the following term:

“The special leave petition is dismissed.

However, the petitioner is granted liberty to apply for cancellation of bail in case if any of the ingredients for grant of bail is found to be breached by the respondents.”

The factual matrix of the case is that the petitioner preferred Cr. Misc. No. 6016 of 2019 with a prayer for bail in connection with Salimpur P.S. Case No. 138 of 2018 registered for the offences punishable under Sections 302/34 of the I.P.C. and Section 27 of the Arms. The prosecution case, as per the written report of Ramesh Singh on 27.5.2018 submitted to the S.H.O., Salimpur Police Station, is to the effect on 27.5.2018 at 6.00 A.M., the informant was standing at his door and his nephew Nandesh Kumar alias Bajrangi was returning home after taking milk. In the meantime, four accused persons, namely, Lalit Vijay Yadav, Sidhnath Yadav, Mantu Singh and the petitioner Vijay Shankar Yadav were standing in the lane, variously armed. The petitioner was armed with licensed rifle



and others were armed with pistol. As soon as the nephew of the informant entered the lane, co-accused Sidhnath Yadav and Lalit Vijay Yadav caught hold of him and started assaulting him with fists and slaps. Thereafter, co-accused Mantu Singh ordered to shoot and co-accused Sidhnath Yadav gave similar order, whereupon the petitioner Vijay Shankar Yadav fired from rifle causing injury on the back of Nandesh Kumar alias Bajrangi, as a result he died on the spot. Co-accused Sidhnath Yadav also fired on Nandesh Kumar and thereafter, after giving threat to life, the accused persons escaped from the scene but this part of accusation has wrongly been recorded in paragraph 3 of the order to the following effect:

“Prosecution case as per the written report of Ramesh Singh submitted to S.H.O. Salimpur P.S. is to the effect that on 27.05.2018 at 6 A.M., the informant was at his door and the nephew of the informant, Nandesh Kumar@ Bajrangi was bringing milk from the shop when the four accused persons including the petitioner came variously armed. It is alleged that the nephew of the informant was caught hold by co accused by Sidhnath Yadav, Lalit Vijay Yadav and on the order of the co-accused Manu Singh to fire, co-accused Sidhnath Yadav fired with his licensed rifle causing injury on the back of the Nandesh Kumar, as a result, the informant died on the spot. Co-accused,



Sidhnath Yadav, again resorted to fire on the victim. The occurrence was witnessed by the other nephew of the informant, namely, Ashutosh Kumar, Karmveer Kumar and the younger brother of the informant, Vijay Singh.”

Hence, the present modification application.

In fact the petitioner fired at Nandesh causing injury on the back but since the medical opinion suggests that wound of entry was on the front being lacerated wound of inverted margin on right side of the chest and wound of exit being lacerated wound on the back which is contrary to the accusation of causing fire arm injury on the back, the petitioner was granted bail. But, this contradiction was not clearly recorded in the submission of petitioner recorded in paragraph 4 of the order dated 5.2.2019.

In the circumstances, the order dated 05.02.2019, passed in Criminal Miscellaneous No. 6016 of 2019 is modified to the extent that it is alleged against the petitioner Vijay Shankar Yadav that he fired from licensed rifle causing injury on the back of the victim Nandesh Kumar and subsequently, Sidhnath Yadav also resorted to fire but the accusation was not corroborated by the medical opinion, as the medical opinion suggested wound of entry on the chest and the wound of exit on



the back.

Henceforth, it is expected from the office that whenever a certified copy of the order dated 5.2.2019 is issued, it should be issued along with the present order dated 6.11.2019.

Accordingly, the modification application is disposed of.

(Dinesh Kumar Singh, J)

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