

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7085 of 2015

Arising Out of PS. Case No.-813 Year-2007 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

Janak Lal Mahto, Son of Late Rit Lal Mahto, Resident of village - Korbaddha,
P.S. Samastipur (M), District – Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rajendar Mahto, S/o Late Janki Mahto, Resident of village - Korbaddha, P.S. Samastipur (M), District – Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Prakash Mahto, Advocate Mr. Yogendra Prasad Singh, Advocate
For the State	:	Mr. Sunil Kumar Pandey, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 02-12-2019

Heard learned counsel for the parties.

2. Perused the counter affidavit as well as reply to the counter affidavit.

3. The petitioner has challenged the order of cognizance dated 16.12.2008 passed in Complaint Case No.813 of 2007, whereby the learned Judicial Magistrate, 1st Class, Samastipur has taken cognizance against the petitioner and other co-accused for the offences under Sections 302/34 of the Indian Penal Code.

4. The backdrop of this case is that opposite party No.2, Rajendra Mahto had filed Samastipur Police Station Case No.475 of 2005 for the offences under Sections 302/34 of the



Indian Penal Code against the petitioner and others alleging therein that the petitioner and others had bitterly assaulted to the *Bhagina* of the informant on 14.10.2005 and as a result whereof Prem Chand Lal, the *Bhagina* of the informant was declared dead in the hospital when carried for treatment in the morning of 15.10.2005.

5. During investigation of the case, some witnesses stated before the Police that though occurrence of assault had taken place but the same was simple one and feeling humiliated the victim committed suicide. Some other witnesses stated that due to love affairs the victim had committed suicide. During pendency of investigation, the informant had filed a protest petition on 03.12.2005 alleging therein that the Police is in collusion with the accused and is likely to help the accused.

6. On 24.01.2006, the informant filed a petition before the court that statement of the witnesses named in the order dated 24.01.2006 be recorded under Section 164 of the Code of Criminal Procedure. However, no order was passed by the court rather on 21.08.2006, a copy of that petition of the informant, whereby informant had prayed for examination of his witnesses, namely, Sushil Kumar Singh, Mahesh Kumar Mahto and Ram Nandan Mahto under Section 164 of the Code of Criminal



Procedure was transmitted by the court to the Inspector General of Police, Darbhanga. On 02.04.2007, approximately after 1½ years of the occurrence, the investigating officer prayed the court for permission to get the viscera examined by the Forensic Science Laboratory. Since the witnesses were stating, from the very beginning, to the Police that the deceased had consumed poison, the viscera should have been sent for forensic examination at the earliest but the Police delayed it. Hence, apprehension of the informant that the Police was in collusion with the accused was not baseless. In the viscera report, the doctor did not find any poisonous substance in the body of the deceased.

7. On 31.01.2007, the Police submitted report under Section 173 of the Code of Criminal Procedure stating therein that the occurrence of murder is true but allegation against the accused is untrue.

8. On 11.06.2007, a petition was filed on behalf of the informant that the Police has submitted a collusive report and the informant wants to proceed with the criminal case on the basis of protest petition already filed and is ready to produce and examine the witnesses. On the same day, the court accepted the prayer of the informant to proceed on the basis of protest petition and the



date was fixed on 12.06.2007. On 12.06.2007, the Court decided to proceed with the protest petition and side by side accepted the final form submitted by the Police. The protest petition was registered as Complaint Case No.813 of 2007, wherein after examination of witnesses during inquiry under Section 202 of the Code of Criminal Procedure, the impugned order dated 16.12.2008 was passed.

9. Learned counsel for the petitioner submits that there is no material to proceed against the petitioner rather the available material would suggest that continuance of criminal proceeding would amount to abuse of the process of the Court.

10. I have gone through the statement of witnesses examined under Section 202 of the Code of Criminal Procedure as well as entire material available on the record. The law is well settled that even suspicion based on material on the record is sufficient to ask the accused to face trial.

In the present case, there is direct allegation that death was caused due to assault by the petitioner and others. Though the same does not find corroboration from medical evidence only to the extent that the doctor did not find any external injury on the person of the deceased. Likewise, no poisonous substance was found during forensic examination of



the viscera to substantiate defence version of suicide. Moreover, the entire issues can be looked into only at the stage of trial because the matter directly relates to appreciation of evidence which cannot be done at the stage of cognizance.

11. Learned counsel for the petitioner has placed reliance on a single Judge Judgment of this Court in the case of *Surendra Pandit @ Soren Pandit and Others versus the State of Bihar and Another* reported in *2015 (3) BLJ [PHC-168]*.

12. In the aforementioned case, the Bench held that once the Court accepted the Police report under Section 173 of the Code of Criminal Procedure, on the same fact the prosecution on complaint case cannot be allowed. The case is distinguishable to the extent that in the present case the court had not accepted the final form first and at a subsequent stage proceeded with the protest petition.

13. In my view, the impugned order suffers from no infirmity, hence, requires no interference. Accordingly, this application is *dismissed* as devoid of any merit.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	AFR
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