

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.262 of 2017

Arising Out of PS. Case No.-236 Year-2016 Thana- BARHARIA District- Siwan

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1. Ramakant Prasad and Ors Son of Sri Jaideo Bhagat,
 2. Jaichand Prasad, Son of Sri Jaideo Bhagat,
 3. Manoj Kumar, Son of Sri Jaideo Bhagat,
 4. Prabhu Bhagat, Son of Ramchandra Bhagat,
 5. Pankaj Kumar, Son of Jaideo Bhagat, All are resident of Village- Girdharpur, P.S.- Barharia, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary Department Of Home , Bihar , Patna and Ors
2. The Superintendent of Police, Siwan.
3. The Investigating Officer, Barharia P.S. Case No. 236 of 2016, Barharia, District Siwan.
4. Anita Devi, Wife of Sri Singhasan Bhagat, Resident of Village- Girdharpur, P.S.- Barharia, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anuj Kumar
For the Respondent/s : Md. Nasrul Huda Khan Sc1

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-01-2019

Heard learned counsel for the petitioners and learned counsel for the State.

2. The petitioners have filed the present writ petition for quashing the First Information Report (for short 'FIR') of Barharia P.S. Case No. 236 of 2016 initially registered under Sections 364/34, 302 and 201 of the Indian Penal Code (for short 'IPC').

3. On perusal of the FIR, it would transpire that the informant Anita Devi in her written report, dated 09.11.2016



alleged that on 04.11.2016, at 4:00-5:00 a.m, her husband Singhasan Bhagat went towards the orchard in order to attend the call of nature and, even after lapse of two hours, when he did not return, she got worried and started searching for him, but she could not get any clue. She has further alleged that two days ago, the petitioners and two others with whom there was existing land dispute had threatened that if her husband would not leave his claim over the land in dispute, he would be kidnapped. She claimed that they had kidnapped him in order to kill him.

4. On the basis of the aforestated written report, initially the FIR was registered under Section 364/34 IPC only but, subsequently, at the request of the investigating officer Sections 302 and 201 of the IPC were added to the FIR.

5. The contention of the learned counsel for the petitioners is that the informant has named the petitioners in the FIR only out of suspicion. There is no material on the basis of which they can be put on trial. He has contended that the petitioners are closely related to the informant. They had no hand in the alleged kidnapping and murder. However, since some unknown persons had committed the offence, out of the existing land dispute and previous enmity, name of the petitioners has been given in the FIR.



6. Per contra, learned counsel appearing for the State submitted that it is true that there is no eye witness to the occurrence and the name of the petitioners has been given as only two days prior to the date of occurrence, the petitioners had threatened to kidnap informant's husband. However, in course of investigation, the witnesses, whose statements were recorded under Section 161 (3) of the Code of Criminal Procedure, have alleged involvement of the petitioners in the alleged offence and on completion of investigation, the charge-sheet has also been submitted against them. He has drawn my attention towards the post-mortem examination report of the victim, which shows that the doctor had opined the cause of death as asphyxia due to smothering.

7. I have heard learned counsel for the parties and perused the record.

8. The allegations made in the FIR do attract the ingredients of a cognizable offence. To hold investigation into a cognizable offence is the statutory right of the police.

9. In that view of the matter, the institution of the FIR or its investigation cannot be held to be bad.

10. On the basis of materials collected, in course of investigation, if the accusation against the petitioners has been



found to be true and charge-sheet has been submitted before the court, I see no reason to quash the FIR.

11. Once the police report is submitted before the court, it is for the Magistrate, in whose court, the police report has been submitted, to look into the materials collected and pass orders in accordance with law.

12. The writ petition, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.01.2019
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