

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4506 of 2016

Arising Out of PS. Case No.-12 Year-2012 Thana- WEST CHAMPARAN GRP CASE
District- West Champaran

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Lal Babu, son of Umat Mian, resident of village - Bahuwari, P.S. - Sugauli,
District - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Uma Shanker Verma, Advocate Mr. Binod Kumar Mishra, Advocate
For the Opposite Party/s :		Mr. Manish Kr. 2, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date : 01-02-2019

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 04.12.2015 passed by the Rail Judicial Magistrate, Bettiah, West Champaran, in Raxaul Rail (GRP) P.S. Case No.12 of 2012 by which the learned Magistrate has taken cognizance against the Petitioner and others for the offence under Section(s) 302, 201, 120-B Indian Penal Code.

2. Counsel for the Petitioner submits that Petitioner is witness of Raxaul Rail P.S. Case No.12 of 2012 filed by Shane Elahi (informant) registered under Section 302/34 Indian Penal Code levelling specific allegation against three named accused persons for killing one Shankar Mahto by firearm. The



police after about three years of filing of the case submitted supplementary charge-sheet without any material against the Petitioner and others for the offence under Section(s) 302, 201, 120-B Indian Penal Code on 20.10.2015 on the basis of observation of the Superintendent of Police and Dy. Superintendent of Police. The police did not submit charge-sheet against main accused (assailants) named in the written report. There is specific allegation against Md. Abbas Mian, Md. Ashab Mian and Md. Javed Mian of causing murder of Shankar Mahto. During investigation, the Petitioner, who was one of the witness, along with other witnesses have supported the prosecution case. The police made prayer in the Court below for issuance of Warrant of Arrest against the Petitioner on 23.08.2013 as well as against the Informant. Protest Petition was also filed against the conduct of the police on 17.11.2012 before the Magistrate, but no order has been passed on the Protest Petition. Copy of the Protest Petition filed before the Court below has been filed enclosed as Annexure-4.

3. Petitioner further submits that the police at no stage prayed for Warrant of Arrest against the named accused persons, who were alleged in the written report to be main culprit. The police in very routine and mechanical manner submitted



supplementary charge-sheet against the Petitioner and eight other accused persons although there was absolutely no material on record except that some persons used the mobile during course of incident.

4. From perusal of supplementary charge-sheet submitted by the police dated 26.10.2015, it would appear that Investigating Officer has come to conclusion that the Superintendent of Police, Railway, directed to file charge-sheet against the Petitioner. Therefore, charge-sheet was submitted. The Court below without applying mind and looking into the relevant records and materials in the case diary took cognizance against the Petitioner and others by the impugned order.

5. Counsel for the State submits that there is no illegality in the impugned order.

6. Having heard counsel for the parties and on perusal of the record, it appears that the Informant, Shane Elahi, filed fard-e-beyan, alleging that on the date of occurrence he had left the house along with his servant for boarding train and stopped for urinating about 15-20 steps from the house of Fulmati Devi, situated at Railway Colony. He heard sound of cry of Shankar Ram coming from near the house of Fulmati Devi. The Informant saw Md. Abbas Mian, Ashab Mian, Javed Mian there.



Abbas Mian told by holding pistol in his hand to shot at son of Mukhtar Mian and thereafter Ashab Mian fired on his servant understanding him to be son of the informant. He sustained injuries on back side of his head. He fell down. Thereafter, Abbas Mian went near him and fired on Shankar Ram. He told that he is not son of Mukhtar. There was another unknown person with them, who was aged about 56 years, whom the informant could not identify. He identified all the accused in the light of bulb. The Informant fled away towards his house. The miscreants fled away after causing firearm injury to Shankar Ram. The Informant has land dispute with accused persons.

7. Case diary has been received along with supplementary charge-sheet.

8. From perusal of the case diary, it appears that Petitioner was one of the witness before the police during investigation. He has supported the case of the Informant. It further appears that besides the Informant, other witnesses have also supported the case of the Informant before the police. The police vide para 276 of the supplementary case diary only on the basis of direction of Superintendent of Police (Railway) and the recommendation of the Dy. Superintendent of Police, has submitted charge-sheet against this Petitioner and other accused



persons for the offence under Section(s) 302, 201, 120-B Indian Penal Code.

9. From the entire case diary, it appears that none of the witness has alleged any overt act against this Petitioner. The police in mechanical manner has submitted charge-sheet against the Petitioner on the basis of direction of Superintendent of Police. The Court below without looking into the materials in the case diary as well as in the written report took cognizance by the impugned order on the basis of charge-sheet submitted by the police.

10. It further appears from the impugned order that learned Magistrate has not passed any order on the Protest Petition filed on 17.11.2012 (Annexure-4) by the Informant. The Court below has passed the order of cognizance in mechanical manner.

11. In view of such, the impugned order suffers from illegality.

12. Accordingly, impugned order dated 04.12.2015 passed by the Rail Judicial Magistrate, Bettiah, West Champaran, in Raxaul Rail (GRP) P.S. Case No.12 of 2012 along with entire criminal proceeding against the Petitioner is hereby quashed.

13. The Magistrate is directed to hear on the Protest Petition (Annexure-4) filed on behalf of the Informant and



pass appropriate order in accordance with law after looking into allegation in the written report as well as materials available in the case diary.

14. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	AFR
CAV DATE	07-01-2019
Uploading Date	06-02-2019
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