

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5154 of 2016

Arising Out of PS. Case No.-17 Year-2015 Thana- KUCHILA District- Kaimur (Bhabua)

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Vinod Pandey, S/o Bishudha Nand Pandey, R/o of Village – Gara, P.S. - Kuchhila, District – Kaimur at Bhabhua

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mananjay Pandey @ Mantu Pandey, S/o Late Chandra Shekhar Pandey, Resident of Village – Gara, P.S. - Kichhila, District – Kaimur at Bhabhua

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bishnu Kant Dubey
For the Opposite Party/s : Mr. Nand Kishore Pd., APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

9 14-11-2019 Heard Mr. Bishnu Kant Dubey, learned counsel for the petitioner and Mr. Ram Nath Singh Yadav, learned counsel for the Opposite Party No. 2. The learned APP has also rendered his assistance.

The petitioner was named in the F.I.R. but during investigation, his complicity was not found and therefore he was not sent up for trial. However, by taking reference of four paragraphs of the case-diary, the court below has differed with the police report and has taken cognizance against the petitioner also for the offence under Section 302 and other Sections of the Indian Penal Code along with Section 34.



The petitioner along with others are alleged to have assaulted the mother of the informant who became injured and one of the brothers of the informant who succumbed to the injuries suffered by him.

The petitioner has sought quashing of the order on the ground that his implication in the present case is only because of an old land dispute and out of malice. In support of the aforesaid contention, he has stated that at the relevant time, the petitioner was rendering his services in a college about which a certificate has also been granted by the authority of the college.

Further ground raised on behalf of the petitioner is that he was arrested on the day of the occurrence at about 4.30 in the evening, which makes his implication rather false as with the death of a person and he being named in the F.I.R., he would not have waited for the police to arrest him.

The other arguments advanced on behalf of the petitioner is that there is no eye witness to the occurrence and but for naming him in the F.I.R., there is no specific allegation against him.



All the afore-noted grounds are not good grounds for quashing the order of cognizance when there is an accusation against the petitioner along with others of having assaulted the mother and brother of the informant and because of such assault, the brother of the informant died. So far as the specific allegation against the accused persons are concerned, it is alleged against none but there is general allegation of assault by all the accused persons. The petitioner has also argued about the mother of the informant having given a different version of the occurrence.

This grounds urged on behalf of the petitioner is not correct in as much as though there is some difference in the statement made in the F.I.R. and the statement made by the mother of the informant, but minor discrepancies in the statement, especially of an old day who has been injured in the occurrence, would not entitle the petitioner to have the order of cognizance against him quashed. At the stage of taking cognizance, the Court has only to see that whether there is any material against the petitioner for bringing home the offence alleged.



Considering the nature of assault perpetrated by the accused persons and the petitioner being named as one of the persons who participated in the occurrence, I am not inclined to quash the order of cognizance so far as the petitioner is concerned merely on the ground that the police has given him clean chit after investigation.

The prayer made the by petitioner therefore is rejected.

However, if the petitioner prays for discharge before the court below, if such a prayer has already not been made and disposed off, the court below shall take into account all aspects of the matter and shall pass a reasoned order without being prejudiced by the fact that the present petition has not been entertained by this Court.

The petition is dismissed.

(Ashutosh Kumar, J)

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