

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48373 of 2019

Arising Out of PS. Case No.-28 Year-2010 Thana- PAHARPUR District- East Champaran

RINKU SHUKLA @ ANIL KUMAR S/o Bairister Shukla R/o Village-
Damodarpur, District- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dhannjay Kumar No 2, Adv

For the Opposite Party/s : Mr.Pranav Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-09-2019

Heard learned counsel for the parties.

2. The petitioner has sought for quashment of order dated 17.06.2019 passed in Sessions Trial No.1059 of 2017 arising out of Paharpur P.S.Case No.28 of 2010 whereby the learned court below has refused the prayer of the petitioner to discharge and ordered for framing of the charges under Sections 302/34 I.P.C. and 27 of the Arms Act.

3. The challenge is on the ground that there is absolutely no material against the petitioner to proceed with the trial and entire criminal prosecution amounts to abuse of the process of the court so far petitioner is concerned.

4. Paharpur P.S.Case No.28 of 2010 was registered on the written report of local Chaukidar-Satrughan Mahto against unknown alleging therein that some unknown person came on a



motorcycle and caused firearm injury to two unknown person. As a result whereof, both died at the spot. Thereafter, Vijay Pandey, father of one of the deceased and master of another deceased filed a written report to the police alleging therein that soon after the occurrence of firing, other named accused person were seen fleeing from the place of occurrence armed with rifle etc. On 17.03.2010, the petitioner was arrested in connection with Govindganj P.S. Case No.368 of 2010 and his confessional statement was recorded on the same day wherein the petitioner admitted that he was involved in the murder in question alongwith other co-accused. Thereafter, the petitioner was remanded in this case on 11.08.2014 and the police submitted chargesheet. The impugned order also reveals that only material against the petitioner is his confessional statement made to the police while in police custody.

5. Section 25 of the Evidence Act says that no confession made to a police officer shall be proved as against a person accused of any offence.

6. Apparently, the confession was made to a police officer by the petitioner, hence, it cannot be proved during trial.

7. Section 26 of the Indian Evidence Act says that no confession, made by any person whilst he is in the custody of a



police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

8. In this case, the confession was made by the petitioner whilst in the custody of the police officer and not in presence of a Magistrate. Hence, the confession of the petitioner cannot be proved during trial. There is no other material against the petitioner to even suspect the involvement of the petitioner in the crime alleged. Hence, apparently, there is no material against the petitioner to frame charges against the petitioner.

9. Accordingly, the impugned order amounts to abuse of the process of the court. Hence, the same is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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