

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29451 of 2014

Arising Out of PS. Case No.-521 Year-2008 Thana- KHAGARIA COMPALINT CASE
District- Khagaria

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Sudhir Kumar Chourasia son of Ram Mani Chourasia resident of village Maheshkhunt, Pachimbari Tola, P.S. Maheshkhunt, Distt. Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ram Khelawan Singh son of late Puran Prasad Singh resident of village Sonbarsaghat, P.S. Choutham, Distt. Khagaria.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh, Advocate
For the State : Mr. Md. Arif, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 08-01-2019

Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. Despite opposite party no. 2 having appeared through learned counsel and his name also appearing in the cause list, nobody was present when the case was taken up and heard.

3. The present case under section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner for the following relief:

“That, the present petition is directed for the quashing of order dated 21.9.2013 passed in Complaint Case No. 521 ‘C’ of 2008, by Sri A.K. Gond, learned J.M., 1st Class, Khagaria, by which the cognizance



under section 279 & 304 A of I.P.C. has been taken against the petitioner, illegally.”

4. The allegation against the petitioner is that the Jeep dashed the son of the complainant resulting in his death.

5. Learned counsel for the petitioner submitted that he is the owner of the Jeep bearing no. BR 34-3822 which is alleged to have been run by his driver hitting the son of the opposite party no. 2 leading to his death. Learned counsel submitted that the police, after investigation, submitted final form stating that the incident was found to be true under Sections 279/304A of the Indian Penal Code but without chargesheeting anyone as no clue was found. Learned counsel submitted that the same was done on 28.02.2007 and after one and a half months a protest petition was filed by the opposite party no. 2 before the Court on 12.04.2007 in which a completely new story has been stated and the petitioner has been named. It was submitted that in the protest, the stand is that it was the petitioner's Jeep which was run by his driver which hit the son of the informant leading to his death. Learned counsel submitted that initially there was not even a whisper against the petitioner in the F.I.R. and suddenly in the protest, the petitioner being specifically named and the motor vehicle in the F.I.R. being said to be a Truck whereas in the protest it is said to be Jeep of the



petitioner. Learned counsel submitted that the same is due to enmity between the family of the in-laws of the elder son of the informant, who also live in the village of the petitioner i.e., Maheshkhunt where he has a betel shop, due to which, both to settle score and extort some money, a false protest petition has been filed. It was further submitted that the accident is alleged to have taken place in village *Sapaha* whereas all the witnesses of the protest petition belong to village *Sirzua* i.e., of the opposite party no. 2 and, thus, it is clear that all are interested and further that they could not have been in village *Sapaha*.

6. Learned A.P.P. submitted that in the protest, the opposite party no. 2 has explained that he had signed a blank paper and had stated to the Investigating Officer what he had stated in the protest but the same was not recorded.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. The opposite party no. 2 stating a completely different story in the *fardebayan* before the police than what he has stated in the protest petition and merely stating that on blank paper his thumb impression was taken and the Investigating Officer had not correctly written what he had stated, cannot be believed for the reason that after writing the



fardbeyan, the opposite party no. 2 had put his thumb impression at the end of it and the same was converted into an F.I.R. Further, before the police also none of the witnesses had ever stated with regard to any particular person, muchless the petitioner about his role. The narration in the *fardbeyan* clearly reveals that the same could not have been written by the Investigating Officer as various minute details have been given with regard to the information being received by the opposite party no. 2 about the accident on telephone and him going to the hospital as also the timing of the incident. Thus, on an objective consideration and in the background of the facts stated hereinabove, the Court finds that the averments/allegations made in the protest petition which are totally different from what has been stated in the F.I.R. and that too, after almost one and a half months of the police submitting final form, clearly appears to be an after thought and for oblique reasons, as the law does not permit the same person to give two completely different versions of the same incident within a gap of just three months between the two. Thus, by such conduct, the opposite party no. 2 has made his contention in the protest petition completely unreliable.

8. In view thereof, based on such grave and patent contradictions and difference in the two stories, the base of the



entire prosecution story against the petitioner gets weakened to the extent that it is unlikely to result in conviction and, thus, allowing the trial would be an abuse of the process of the Court.

9. Accordingly, the application is allowed. The order dated 21.09.2013 passed in Complaint Case No. 521 C of 2008 by the Judicial Magistrate 1st Class, Khagaria taking cognizance under Sections 279 and 304A of the Indian Penal Code, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

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