

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77825 of 2019

Arising Out of PS. Case No.-21 Year-2018 Thana- PAROO District- Muzaffarpur

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Ranjay Kumar Singh, Male, aged about 45 years, Son of Rajendra Singh,
Resident of Village- Lakshmipur Arar, Ward No.04, P.S.- Saraiya, P.O.
Bakhra, District- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shyama Kant Singh, Advocate

For the Opposite Party/s : Mr. Nawal Kishore Prasad

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 02-12-2019 Heard learned counsel for the petitioner and the State.

2. The petitioner seeks the quashing of the order dated 18.01.2018 passed by learned A.C.J.M.-III (West), Muzaffarpur in connection with Paroo P.S. Case No.21 of 2018, whereby cognizance has been taken against the petitioner under Section 302/34 of the Indian Penal Code.

3. Prosecution case, in short, is that one Rajendra Rai (informant) has given written statement to S.H.O. Paroo police station alleging therein that on 17.01.2018 at about 5.00 P.M., his son had gone with Raushan Kumar Singh, son of Shyam Chandra Singh, village – Chaknathan, P.S. Paroo, District- Muzaffarpur on motorcycle, but he did not return at 9.00 P.M. Later on, dead body of his son was found behind the house of the informant in a canal about 7.00 A.M. Dated 18.01.2019. Thereafter, he informed the Paroo



police station than police came and dead body was sent Muzaffarpur for potmortem. The informant has raised suspicion that on account of land dispute with Ranjay Kumar Singh (petitioner) of the village his son has been done to death in conspiracy with all accused persons and 3 to 4 unknown persons.

4. It is further submitted by the learned counsel for the petitioner that the Investigating Officer submitted final form showing all the cases are false against the petitioner as such the petitioner was not sent up for trial. At the time of investigation, police found no material against the petitioner, after supervision by the S.P., Muzarpur, I.O. submitted charge sheet against Raushan Kumar Singh.

5. Learned counsel for the petitioner further submitted that differing with the opinion of the I.O., the learned court below take cognizance against the petitioner without referring any material against the petitioner only on the basis of petition made by the Assistant Public Prosecutor. Learned counsel for the petitioner further submits that the petitioner is a student of L.L.B. five years course, Sessions 2015-2020 S.K.J. Law College, Muzaffarpur under B.R.A. Bihar University, Muzaffarpur and further submits that the petitioner has good character and has no any criminal antecedent.

6. The order impugned has been assailed on the ground that though two named accused persons including the petitioner and 3 and 4 unknown persons made accused in the F.I.R., i.e. Paroo P.S.



Case No.21 of 2018. During the investigation, accusation against one petitioner namely, Ranjay Kumar Singh was not found true and as such his name was not included in the charge-sheet and he was exonerated by the Investigating Officer. The charge-sheet was submitted only against one person. After the petitioner was exonerated by the Investigating Officer, the learned Magistrate, without assigning any reason, differing with the police report has passed order of cognizance against the petitioner.

7. It has been argued that time without number, it has been held that though the learned Magistrate is competent to take cognizance differing with the police report, the learned Magistrate is required to assign reason succinctly. By way of placing the impugned order, he submits that nothing has been indicated in the impugned order and as such, the order is required to be interfered with.

8. Learned Additional Public Prosecutor has opposed the prayer of the petitioner, however, he was not in a position to satisfy the Court as to whether the learned Magistrate, while passing the impugned order, had assigned any reason.

9. On going through the impugned order, the Court is satisfied that the learned Magistrate has passed the order without assigning any reason while differing with the police report. Once in a police case, after investigation, police submits report exonerating the accused persons, the learned Magistrate, though competent to pass order of cognizance differing with the police report, at the same



time he/she is required to succinctly indicate the reason for differing with the police report.

10. In view of the fact that the order impugned does not indicate any reason, the same is liable to be set aside.

11. Accordingly, the order impugned is hereby set aside and the matter is remitted back to the learned Magistrate to examine the record and pass order in accordance with law. If the learned Magistrate intends to proceed against the petitioner, he is required to succinctly indicate reason for differing with the police report.

12. With above observation and direction, the petition stands allowed.

(Anjani Kumar Sharan, J)

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