

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73906 of 2019

Arising Out of PS. Case No.-18 Year-2010 Thana- GOPALGANJ TOWN District- Gopalganj

1. SHAILENDRA SHEKHAR MISHRA S/o Indra Deo Mishra
2. Anand Mishra S/o Umesh Mishra
Both R/o village- Bagahi, P.S.- Kateya, P.O.-Baghi Bazar, District-
Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ashish Giri
		Mr. Rajat Kumar Tiwary, Advocates
For the Opposite Party/s	:	Mr. Sanjay Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 06-02-2020

Heard parties.

This application has been filed for quashing the order dated 30.08.2018 passed by learned Chief Judicial Magistrate, Gopalganj arising out of Gopalganj P.S. Case No.18/2010 by which cognizance has been taken against petitioners under Sections 302, 120B/34 of Indian Penal Code and Section 27 of Arms Act and summons have been issued for their appearance to face the trial.

FIR was instituted on the basis of fardebyan of informant Ajit Rai who has stated in his fardebyan that on 11.01.2010, while he along with his brother Rajesh Rai and relatives Ashok Rai, Lalan Rai and his cousin brother Vijay Rai



were returning to their home on their jeep, one bolero silver colour car overtook their car and stopped it and Amod tiwari, Birendra Yadav, Ramashish Yadav, Surendra Yadav variously armed surrounded the car and it is further alleged that at the instigation of Amod Tiwari, all other miscreants Birendra Yadav, Ramashish Yadav, Surendra Yadav resorted to indiscriminate firing on the jeep as a result of which his brother Brajesh Rai and his relative Ashok Rai died on the spot.

After investigation, police submitted charge-sheet against accused Birendra Yadav, Suresh Yadav, Mukul Tiwari, Brajesh Tiwari, Shambhu Mishra and Om Prakash Mishra giving rise to Sessions trial no.370/2010 in which except Birendra Yadav others have been acquitted.

It is submitted that investigation was kept pending against other accused and during investigation, the complicity of petitioners were found in said crime and a supplementary charge-sheet was submitted against the petitioners on 25.07.2018 and thereafter the learned court took cognizance against petitioners and issued summons by order as impugned.

It has been submitted on behalf of the learned counsel for the petitioners that during entire investigation, no incriminating material was found against petitioners and



investigating officer has failed to collect any evidence showing complicity of petitioners in said crime and the court below in a mechanical manner has taken cognizance against petitioners although there is no material in the entire case diary against the petitioners for taking cognizance against them.

Cognizance can be taken if there is any material found against petitioners during investigation for which supplementary charge-sheet has been filed by the prosecution and only because cognizance was taken against other accused, as such cognizance is to be taken against petitioners also cannot be countenanced as cognizance of offence can be taken if *prima facie* case of commission of offence by petitioner is made out on the basis of material collected during investigation.

From reading of the order taking cognizance, it does not appear that learned court has applied its judicial mind on the material available on record and has not referred or mentioned on what basis it found that *prima facie* case is made out against petitioners for issuance of summons. At the stage of taking cognizance, the learned Magistrate has to apply his judicial mind to find out whether a *prima facie* case has been made out for summoning the petitioners or not.

Accordingly, the order impugned is quashed and set



aside. The matter is remitted back to the trial court to consider the matter afresh and pass a fresh order considering the case record and material and evidence which were found/collected against petitioners in order to form *prima facie* opinion with respect to complicity/involvement of petitioners in alleged crime within a period of three months from the date/receipt of a copy of order passed by this Court.

This disposes of this criminal miscellaneous petition.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2020
Transmission Date	21.02.2020

