

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9453 of 2022

Arising Out of PS. Case No.-435 Year-2018 Thana- BUDDHACOLONY District- Patna

SANDEEP KUMAR Son of Shri Bachchu Prasad Singh Resident of Akhatwara, Bahadurpur, P.O. - Ballipur, District - Samastipur, Bihar Presently residing at Shashtrinagar, CID Colony, Quarter No. 19/48, P.O. and P.S. - Shashtrinagar, District - Patna, Bihar - 800023.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 10027 of 2022

Arising Out of PS. Case No.-436 Year-2018 Thana- BUDDHACOLONY District- Patna

SANDEEP KUMAR Son of Shri Bachchu Prasad Singh Resident of Akhatwara, Bahadurpur, P.O. - Ballipur, District - Samastipur, Bihar Presently residing at Shashtrinagar, CID Colony, Quarter No. 19/48, P.O. and P.S. - Shashtrinagar, District - Patna, Bihar - 800023

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 9453 of 2022)

For the Petitioner/s : Mr. Shashank Kunwar, Adv.
Mr. Apurv Harsh, Adv.
Mr. Manu Tripurari, Adv.
Mr. Prashant Bhardwaj, Adv.
Mr. Nitish Kumar, Adv.
Ms. Mahima Sharma, Adv.

For the Opposite Party/s : Mr. Md. Aslam Ansari, APP
(In CRIMINAL MISCELLANEOUS No. 10027 of 2022)

For the Petitioner/s : Mr. Shashank Kunwar, Adv.
Mr. Apurv Harsh, Adv.
Mr. Manu Tripurari, Adv.
Mr. Prashant Bhardwaj, Adv.
Mr. Nitish Kumar, Adv.



For the Opposite Party/s : Ms. Mahima Sharma, Adv.
Mr.Umesh Lal Verma

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

8 05-04-2023 **CRIMINAL MISCELLANEOUS No.9453 of**

2022 :

Mr. Shashank Kunwar on instruction from the Advocate On Record seeks permission to withdraw this application.

Criminal Miscellaneous no. 9453 of 2022 stands dismissed as withdrawn.

CRIMINAL MISCELLANEOUS NO. 10027 OF
2022:

We have heard Mr. Shashank Kunwar, the learned Advocate for the petitioner who, is a regular constable and has been made accused in the subject F.I.R i.e. Budha Colony P.S. Case No. 435/2018 for the offences under Sections 147, 148, 149, 188, 341, 342, 323, 324, 325, 307, 326, 333, 337, 338, 353, 427, 449, 450, 451, 452, 461 and 120(B) of the Indian Penal Code and Section 3 and 4 of Damage to Public Property Act, on the charge of committing affray in the Police Headquarters



on the death of one of the trainee lady constables.

The main plank of argument of Mr. Kunwar is that the only source of evidence in the entire investigation report is the CCTV footage, some photographs and statements of eye witnesses. It is his contention that in none of these, the name of the petitioner figures. He further submits that notwithstanding the fact that a case had already been registered, four other cases were also registered by Patna Police when the allegations in all of them were identical.

We find that in this case, there has been a delayed filing of charge-sheet, notwithstanding the orders passed by this Court and other Courts for expediting the investigation and submitting the report under Section 173 Cr.P.C. Nonetheless, it took the police four years for concluding the investigation, charge-sheeting the petitioner and sending him up for trial.

Cognizance in this case has yet not been taken.

The learned counsel for the petitioner has



argued that without there being any evidence, he has faced the rigours of investigation for all this while and he remained under suspension and was also subjected to a departmental proceeding leading to his dismissal from service, which order was later set aside and the petitioner was reinstated in service.

As on date, the petitioner, in contemplation of a fresh Departmental proceeding, is still under suspension and has not been getting the upgraded subsistence allowance. He further submits that in no case can cognizance be taken in this case as four years have passed by when the occurrence is said to have been committed and all the sections under which the petitioner has been charge-sheeted, three years is the maximum time limit when cognizance could be taken for such offences in view of the mandate of Section 468 of Code Of Criminal Procedure.

It has further been submitted that from the perusal of the investigation papers, it would become very evident that the charge-sheet has been submitted in a



hasty manner, without looking into or fastening particular acts against particular accused persons. Out of almost 400 to 500 trainee constables, only 167 were subjected to investigation. The further argument of the petitioner is that the affray was committed showing comradery/ bonhomie with the trainee lady constable one of whom had died in hospital. Since the petitioner is a regular constable, there was no reason for him to stand in support of such riotous crowd of trainee constables.

On these grounds, it has also been urged that during the entire period of investigation, no incriminating material could be collected against him but only while the investigation was about to be closed, his name figured and it appears that only because he was made accused in the first instance for whatever reasons, the police has chosen to justify the registration of the F.I.R, naming the petitioner as one of the accomplices of the rioters.

The entire gamut of evidence was collected way back in the year 2018 but for reasons unknown, on the same set of evidence collected three years ago,



charge-sheet was submitted after 4 years of the registration of the F.I.R.

After having heard the learned counsel for the petitioner and Mr. Md. Aslam Ansari, the learned counsel for the State, this Court finds that the charge-sheet in this case has been submitted on 23.10.2022 after about 4 years of the registration of the F.I.R. Merely because the charge sheet has been submitted in this case, a Court would not be precluded to look at the justification of lodging the F.I.R and continuing with the investigation for such a long time (refer to **Anand Kumar Mohatta and Anr. vs State (Govt. Of Nct Of Delhi; 2019 11 SCC 706)**). Nonetheless, from the tenor of investigation, it appears that even though the petitioner was not a trainee but those trainee constables were acting under the exhortation of regular constables as well.

In any view of the matter, if no cognizance has been taken in this case, nothing would befall on the petitioner. This Court also does not find any malafides in prosecuting the petitioner in the present case.



The argument of the learned counsel for the petitioner that the delayed submission of the charge sheet is itself evident of malafides, is not acceptable to this Court. The investigation, for sure, has been delayed beyond redemption but that can not itself be ground to infer malafides or the registration of the case and ensuing investigation and submission of charge-sheet to be totally bad in the eyes of law. If for any reason, cognizance is taken against the petitioner, it shall be open for him to agitate before the appropriate forum against the order of cognizance.

We say so after taking into account the submission made on behalf of the petitioner that any judicial order taking cognizance against the petitioner would be hit by Section 468 of Code of Criminal Procedure. However, since the charge-sheet in this case has been submitted and none of the accused persons charge-sheeted have been given any liberty with respect to challenging the investigation or the F.I.R, there is no reason why it should be extended to the petitioner when



there has been a long drawn investigation with materials against the petitioner, which it would not be necessary to adumbrate in this order as it might prejudice the case of the petitioner in future.

For the aforementioned reasons, this Court is not inclined to accede to the prayer of the petitioner for quashing the subject F.I.R. i.e. Budha Colony P.S. Case No. 435/2018.

This petition (Criminal Miscellaneous No. 10027 of 2022) is dismissed but reserving the liberty to the petitioner to challenge the order of cognizance, if at all taken against him, before an appropriate forum.

(Ashutosh Kumar, J)

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