

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33419 of 2015

Arising Out of PS. Case No.-84 Year-2013 Thana- RAJIVNAGAR District- Patna

Sanjay Kumar Sinha son of Late Dr Tulsi Prasad Sinha, resident of Jagriti Nagar, Magistrate Colony Road, P.S.- Rajeev Nagar, Dist.- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Sangeet Deokuliar, Advocate
For the Opposite Party/s	:	Mr. Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V. JUDGMENT

Date : 02-08-2023

Heard Mr. Ajay Kumar Thakur, learned counsel duly assisted by the Mr. Sangeet Deokuliar for the petitioner and Mr. Jitendra Kumar Singh, learned APP for the State.

2. The present petition under Section 482 of the Cr.P.C. have been preferred for the quashing of the order dated 23.03.2015 passed in Rajeev Nagar P.S. Case No. 84 of 2013 by the learned Judicial Magistrate 1st Class, Patna by which cognizance has been taken under sections 399, 402, 120(B) of the I.P.C. and Sections 25(1-b) A, 26 and 35 of the Arms Act.

3. The facts of the case as narrated by the petitioner is/are as follows:

(i) that, one Dhirendra Kumar Pandey, the then Station Head Officer of the Rajeev Nagar Police Station lodged the present case under sections 399/402/120-B of the I.P.C. and under section 25(1-b)a/26/35 of the Arms Act



alleging that that on 07.06.2013, five armed criminals had assembled near petitioner's house, at about 9:00 AM. in order to commit murder of his wife Dr. Sarita Sinha in the morning and thereafter also commit dacoity in the house to give it the colour of murder in course of committing dacoity. It has further been alleged that the entire criminal act was being conspired under directions of the petitioner through his mobile phone;

.(ii) the petitioner was married with Dr. Sarita Sinha in the year 1995 and had a turbulent married life. When Sarita Sinha entered his house after completing her House-job from Darbhanga Medical College in 1997, the petitioner's father having already passed away about six months prior to the marriage; and his mother suffering from cancer and having lost her desire to live breathed her last in a hospital in Surat. The petitioner was there with her for a pretty long time and during that time the total control of his properties from 24.10.1999 to 01.12.1999 was with his wife who developed greed for it and was fully supported by her family members;

(iii) when the situation reached became unbearable and beyond control for the reasons as stated above, the petitioner filed some cases and Informatory petitions for



her misdeeds and even for protection to his life in view of incident of threats and intimidation and use of criminal force by the family members of Dr. Sarita Sinha and other unknown persons. The petitioner also sought indulgence of Patna High Court at times.

4. Mr. Ajay Kumar Thakur, learned counsel for the petitioner submits that the informant filed this case at the behest of Dr. Sarita Sinha, his wife by fabricating the facts inasmuch as the local police was hands in glove with her to implicate him.

5. The further case of the petitioner is that the other accused persons namely, Pankaj Kumar and Vipulesh were forced to sign blank documents only to implicate the petitioner herein. Further, the seizure list witness, Sudhir Kumar is a physiotherapist closely associated with his wife, Dr. Sarita Sinha. The relevant paragraph nos. 14 and 17 are incorporated here-in-below for the proper assistance:

14. That, the petitioner has been made accused by the S.H.O. of Rajiv Nagar police station with ulterior motives and under the influence of higher officials on the very ground of confessional statement of co-accused Pankaj



Kumar who later on unfolded the truthfulness of the prosecution case by way of his letter from Jail sent by the Assistant Jail Superintendent. Adarsh Kendriya Kara, Beur Vide Memo no, 4429 dt. 23.08.2013.

17. That. Dr. Sarita Sinha has made several false complaints including the allegation of killing of her son vide her Complaint to the Director General of Police, Bihar dated 28.05.2013 which was found untrue vide Enquiry Report dated 05.06.2013. On the other hand, no action has been taken against Dr. Sarita Sinha for lodging a false complaint of such heinous offence against the petitioner.

6. Learned counsel for the petitioner submits that he is running from pillar to post to save his life and property but his wife and other family members are hell bent upon to harass him and grab his properties and this case is in continuation of that motive.

7. The further submission is that even if accepted at face value, the act of preparedness in itself does not constitute an offence. In support of his submission, he has cited decisions of **Hon'ble the Supreme Court of India** in



Malkiat Singh and Anr vs. State of Punjab reported in 1970 AIR 713 in which it was held that mere preparedness cannot be held to be an offence. He, further cited another case of **Patna High Court in Manoj Kumar @ Manoj Kunar Gupta vs. State of Bihar reported in (2007) 1 PLJR 320** in which the paragraph 7, which was recorded as follows:

7. As a matter of law a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the actus reus of a criminal attempt. The sufficiency of the actus reus is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson,



however clearly it may be proved that he intended to set fire to a haystack at the time of the purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but if he bends down near the stack and lights a match which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it.

8. The last citation given by Mr. Ajay Kumar Thakur is another **Apex Court Judgment in Chaturi Yadav and Others vs State of Bihar reported in (1979) 3 SCC 430** which held that assembling and making preparation to commit theft cannot be proved although, possibility of intention to commit some other offence is/are there. He as such submits that the present petition be allowed and the cognizance order dated 23.03.2015 taken by the learned Judicial Magistrate, 1st Class, Patna in Rajeev Nagar P.S. Case No. 84 of 2013, so far as the petition is concerned, is fit to be quashed.

9. Learned State Counsel, Mr. Jitendra Kumar Singh has filed a counter affidavit on behalf of the Senior Superintendent of Police, Patna and submits that at this stage, the only thing that has to be seen is whether a prima-facie case is made out against the accused-petitioner herein or not.

10. The further submission of the learned State



Counsel is that the accused persons were arrested with weapons who confessed to have been asked by the petitioner to kill the lady (Dr. Sarita Sinha).

11. It is his submission that the Police investigated the matter, submitted chargesheet and the learned Court having prima-facie satisfied took cognizance in the matter. He as such submits that it cannot be said that the Police in high handedness matter, is trying to implicate him at the behest of his wife, Dr. Sarita Sinha as the learned Subordinate Court prima-facie is/was satisfied that a case is made out against the petitioner herein amongst other.

12. It is his further submission that the ploy of Vipulesh and Pankaj Kumar to create a defence already stands rejected in view of the fact that their discharge petition was not allowed by the learned Trial Court and they are facing the trial.

13. It is the further submission of the learned APP is that the petitioner had earlier moved in Cr.WJC No. 648 of 2014 and he has taken this Court to the Annexure R/1 which is part of the counter affidavit of the Senior Superintendent of Police, Patna to show that one of the prayer of the petitioner was as follows:



C. For issuance of an appropriate Writ Order/s, Direction/s commanding the respondents for transfer of investigation in connection with Rajeev Nagar P.S. Case No. 84 of 2013 dt. 07.06.2013 (State Vs. Pankaj Kumar Singh & Ors.) to another agency; for initiation of appropriate action/actions against the erring police officials; and award of suitable compensation for the ongoing harassment, mental agony and threat of further implication of the petitioner by the local police."

14. He submits that this Cr. WJC 648 of 2014 was withdrawn by the petitioner on 26.03.2015.

15. He submits that this fact has been suppressed by him when in paragraph 2 of the present petition, he has stated that *the petitioner has not moved this Hon'ble Court earlier in this matter.*

16. It is his submission that in the said Cr.WJC while allowing the petitioner to withdraw the petition, he was granted liberty to raise all the points available before the learned Magistrate concerned and in case, such a petition to be filed, the Court was directed to pass a reasoned order. He further submits that the petitioner never submitted any petition before the concerned Magistrate.



17. He as such submits that the petition is fit to be dismissed for suppression of facts.

18. Having gone through the rival submissions as also the facts on records, this Court finds force in the submissions put forward by the learned APP. The claim of the petitioner is that the Police was hand in glove with his wife (Dr. Sarita Sinha) to implicate him in this case.

19. However, the investigation took place on the basis of materials available on record and the Police submitted chargesheet. Thereafter, the learned Judicial Magistrate after finding prima-facie case against the petitioner took cognizance which cannot be faulted upon.

20. Further, the points raised by the learned counsel for the petitioner that mere preparation cannot lead a person for conviction, the same is for the Trial Court to decide.

21. In most of the cases which has/have been cited by the learned counsel for the petitioner including Chaturi Yadav and Ors (supra), it relates to conviction of the accused in which the Hon'ble Apex Court held that mere preparation of crime is different from actual crime and as such that cannot be the basis of conviction.



22. Here, it is not the final order and/or it is not the case of the petitioner that the Court has come to the conclusion and/or convicted the petitioner rather it is only a prima-facie satisfaction of the learned Judicial Magistrate on the basis of materials available on record which led her to take cognizance in the matter against amongst other, the petitioner herein.

23. The petitioner has liberty to raise all the points in his defence before the Trial Court so that the trial finally comes to an end.

24. However, so far as the present petition is concerned, having gone through the facts of the case and the submissions put forward by the respective counsels, this Court do not find any merit in the petition preferred by the petitioner herein.

25. The Cr. Misc. No. 33419 of 2015 fails and is accordingly dismissed.

(Rajiv Roy, J)

Kiran/-

AFR/NAFR	AFR
CAV DATE	26.07.2023
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