

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34593 of 2021

Arising Out of PS. Case No.-177 Year-2017 Thana- RIVILGANJ District- Saran

1. Niraj Rai, Son Of Awadh Kishore Rai Resident Of Village - Inai, Mubarakpur P.S. - Revilganj, District - Saran.
2. Pankaj Kumar, Son Of Awadh Kishore Rai Resident Of Village - Inai, Mubarakpur P.S. - Revilganj, District - Saran.
3. Dipak Kumar, Son Of Awadh Kishore Rai Resident Of Village - Inai, Mubarakpur P.S. - Revilganj, District - Saran.
4. Chandeshwar Rai, Son Of Late Deoki Rai Resident Of Village - Inai, Mubarakpur P.S. - Revilganj, District - Saran.
5. Dipu Devi, Wife Of Dipak Rai Resident Of Village - Inai, Mubarakpur P.S. - Revilganj, District - Saran.
6. Savitri Devi, Wife Of Awadh Kishore Rai Resident Of Village - Inai, Mubarakpur P.S. - Revilganj, District - Saran.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Mishra- Advocate Mr. Ajay Kumar- Advocate Ms. Raj Rani Choudhary- Advocate
For the Opposite Party/s :		Mr. Rajendra Singh Shashtri- A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 28-08-2023 1. Heard learned counsel for the petitioners and learned APP for the State.

2. The learned counsel for the petitioners seek quashing of the order dated 08.03.2021 passed by the learned Sessions Judge, Saran, Chhapra in Criminal Revision No.125 of 2020 as well as order of cognizance of dated 15.09.2020 passed by Smt. Ruby Kumari, Judicial Magistrate, 1st Class, Saran at Chhapra in UT-104/2020/ UT-86/2021 whereby and whereunder the criminal



revision application preferred by the petitioners has been erroneously rejected affirming the order of cognizance.

3. The learned counsel submits that an F.I.R. being Revilganj P. S. Case No.177 of 2017 was instituted against the accused persons including the petitioners under Section 302, 201 and 34 of the I.P.C. alleging therein that the sister of the informant was married to Niraj Rai on 26.04.2007 and out of the said wedlock, two sons were born namely, Adarsh and Shanskar.

4. It is next alleged that few days after the marriage, the informant's sister was being ill-treated by her in-laws. Further, in the night of 23.03.2017, the family members of Rinku quarreled in the name of medical treatment of her son which was reported by the victim to the informant and on the same night, the accused persons including the petitioners killed his sister and threw her somewhere and concealed the dead body.

5. The learned counsel for the petitioners submits that petitioners have been falsely implicated in the present case. It is next submitted that police after carrying out threadbare investigation, came to a considered conclusion that the petitioners have been falsely implicated in the case and thus, submitted final form exonerating the petitioners. It is next submitted that the son of the deceased's statement was also recorded under Section 164 Cr.P.C., in which he had also not supported the case of the



prosecution. Further, when the informant realized his mistake, a compromise was also entered in between the informant and the accused persons for which a compromise petition dated 16.08.2017 was filed in the Court of learned Additional Chief Judicial Magistrate, Chhapra. The learned counsel submits that learned Magistrate after going through all the evidences on record differed with the police report and took cognizance of the offences under Section 302, 201 and 34 of the I.P.C. It is next submitted that the said cognizance was taken based on the statement made by some highly interested witnesses of the family of the deceased. It is further submitted that being aggrieved by the order dated 15.09.2020 passed by the learned Magistrate taking cognizance, the petitioners preferred a criminal revision before the learned District and Sessions Judge, Saran at Chhapra, who without considering the material on record, dismissed the criminal revision in a most cryptic manner by an order dated 08.03.2021 (Annexure-4).

6. The learned counsel for the petitioners thus submits that once an Investigating Agency after carrying threadbare investigation came to a considered conclusion that petitioners are innocent in that event, differing with the police report and taking cognizance is nothing but mechanical. It is further submitted that even the death was accidental and the son of the deceased had also



not supported the case of the prosecution and she was also provided proper medical treatment by the doctor during the course of treatment on account of the fact that she met with a road accident.

7. The learned Additional P. P. vehemently opposes the quashing application of the petitioners and submits that from bare perusal of the pleadings made in the quashing application, it would manifest that though it has been submitted on behalf of the petitioners that the death was accidental, but the same is not pleaded. It is next submitted that whether the death was accidental or homicidal can be ascertained only in a duly constituted trial. It is next submitted that if police submits a final form exonerating the accused of the allegation that in itself does not give a clean-chit to the accused persons as the Court has the power to either accept the final form or to differ with the same or to proceed on a protest as contemplated under the Cr.P.C. It is next submitted that the learned Magistrate after perusing the evidence on record which included F.I.R., statement recorded under Section 161(3) Cr.P.C. and the statement of the son recorded under Section 164 Cr.P.C. came to a considered conclusion that the death was homicidal and thus, took cognizance. It is further submitted that though it has been pleaded in the quashing application that the cognizance was taken based on a statement made by a highly interested witness



from the side of the deceased, but the name of the witness is not disclosed in the quashing application that who was the witness whose statement was taken into consideration by the learned Magistrate for arriving at a conclusion that the case warrants a trial.

8. The learned Additional P. P. further submits that what is not in dispute rather stands admitted is that Rinku died, whether the death was accidental or homicidal can only be adjudicated in a duly constituted trial and as such, there is no infirmity in the order passed b the learned Sessions Judge in Criminal Revision affirming the order of cognizance passed by the learned Magistrate.

9. Considering the submissions made by the learned Additional P. P., the Court is not inclined to interfere with the order of cognizance and its affirmance by the Revisional Court.

10. The quashing application is dismissed accordingly.

(Satyavrat Verma, J)

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