

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77442 of 2018

Arising Out of PS. Case No.-42 Year-2013 Thana- EKANGARSARAI District- Nalanda

Nand Kishore Prasad S/o Late Kapil Prasad @ Late Kapil Gop, R/o Vill.-
Ram Chandrapur Tariyapar, P.S.- Ekangarsarai, District- Nalanda.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Shailendra Kumar Yadav S/o Mahesh Prasad Yadav, R/o Vill.- Ataramchak,
P.S.- Ekangarsarai, District- Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar, Adv.

For the Opposite Party/s : Mr.Sri Shyam Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

3 20-02-2023 Heard learned counsel for the petitioner and the State.

This is an application for quashing of the order dated
25.9.2018 passed in S.Tr. No. 438 of 2014 by the learned
Additional Sessions Judge-III, Hilsa (Nalanda) arising out of
Ekangarsarai P.S. Case No. 42 of 2013.

As per the prosecution story, Shailendra Kumar Yadav
gave statement on 26.3.2013 in Sadar Hospital Biharsharif
stating therein that one Bhajju Yadav called his nephew, Rajesh
Kumar on phone and when Rajesh Kumar went to his place , it
is alleged that Bhajju Yadav, Raju Yadav, Rajiv Kumar, Chunnu
Kumar, Munnu Kumar, Tetar Gope as also some unknown
persons present there started beating him by iron rod, 'lathi',



belt etc. whereafter it is alleged that he was taken to Ekangardih near railway crossing where the informant was purchasing materials due to occasion of 'Holi'. Allegation is that there also, in his presence, they brutally assaulted his nephew who subsequently succumbed to injuries.

The police investigated the matter and subsequently came to the conclusion that this petitioner also known as Nand Kishore Prasad is actually Tetar Gope against whom there was allegation of brutal assault along with other accused persons. Accordingly, the police submitted charge-sheet against him amongst other.

The matter went to the concerned Court where cognizance was taken and thereafter a petition was preferred under Section 227 of the Cr.P.C. Since other accused persons had also filed the similar petition, the two were clubbed and vide order dated 25.9.2018, the Court of learned Additional Sessions Judge-III, Hilsa, Nalanda took up the matter and wherein the learned Court recorded the following facts :

“Learned A.P.P. as well as learned counsel appearing on behalf of the informant submitted that both the petitions filed by petitioners are not maintainable and



there is no legal ground raised by the counsels of the petitioners to discharge them and all the grounds may be considered in the trial.

At this stage the court has only to see that whether or not there is sufficient material on the case record to frame charge and so far the petitioner Nand Kishore Prasad is concern in Para 12,13,15 and 16 of the case diary the witnesses have clearly stated that one of the accused was the owner of Romeo Tailor and Para 84 of the case diary the witnesses have stated that Tetar Gope is call name of petitioner. Petitioner accepts that he is the owner of Romeo Tailor. Under the circumstances there is ample evidence on the case record to frame charge against him. And so far other petitioners are concern they are named in F.I.R. and the witnesses examined in Para 11,12,13,14,15,16 of the case diary have supported the prosecution case and their



involvement in this offence. In Para 75, 78 and 79 the police authority have found case true against the petitioners. Hence there is sufficient evidence to frame charge against all the accused petitioners u/s 302/34 of the I.P.C.

Accordingly both the petitions dated 27.10.14 and 04.08.16 stand rejected. Petitioners are directed to remain physically present on fixed date i.e on 03-11-2018 for framing charge.”

Aggrieved, the present petition.

Learned counsel for the petitioner submits that he has only one name, Nand Kishore Prasad and no alias name. The police deliberately implicated him stating that Tetar Gope and Nand Kishore Prasad are one and same person. He further submits that there is enmity between the parties and it is his case that due to the said enmity, the present case as also his implication.

Learned APP on the other hand submits that it is a case of Section 302 of the IPC in which, the nephew of the informant after brutal assault, succumbed to the injuries. The



police has investigated the matter and has come to the conclusion that the petitioner is the person who is also named as Tetar Gope which also finds incorporated in the different paragraphs of the case diary. He as such submits that the learned Subordinate Court having being satisfied with the facts of the case and prima facie found the charges against the petitioners herein to be true, no case for interference is required.

Having gone through the rival submissions as also the observation of the learned Sessions Court in which, it has clearly observed that different paragraphs of the case diary clearly show that Tetar Gope is also known as Nand Kishore Prasad, the allegation of brutal assault followed by the death of the nephew of the informant is alleged in the FIR, no case for taking a different view from what the learned Sessions Judge had taken is required.

The petition is misconceived and is accordingly dismissed.

(Rajiv Roy, J)

Ajay Singh/-

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