

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14435 of 2009

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YOGENDRA PRASAD YADAV Son of Late Yodhi Yadav @ Jodhi Prasad
Yadav Resident of Village-Lemuabad, P.S-Pandarak, Dist.-Patna
... .. Petitioner

Versus

1. State Of Bihar
2. Rajaram Singh Son of Mathura Singh @ Padarath Singh Resident of
Village-Dhibar, P.S-Pandarak, Dist.-Patna
3. Sri Ranjan Kumar (Retd. ADJ, Gopalganj) Retd. on 31.01.2018 R/o Road
No-2, RAjendra Nagar, P.O-RAjendra Nagar, P.S-kadamkuan, Dist.-Patna,
State-Bihar, Pin-800016, Ph.-9431833583, 8789502299

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Krishna Pd. Singh, Sr. Adv. Ms. Meena Singh, Adv.
For the Opp. No. 03	:	Mr. Kamaldeo Sharma
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 15-09-2023

This application has been filed for quashing of the order dated 05.08.2008 passed by the learned Additional Chief Judicial Magistrate, Barh, in Pandarak P.S. Case No. 131 of 1991, by which the learned Magistrate has taken cognizance against the petitioner for the offence under Sections 147, 148, 149, 302 and 307 of the Indian Penal Code as well as under Section 27 Arms Act.

2. The facts of this case, in short, are that on 16.11.1991, one Rajaram Singh gave his fardbeyan alleging therein that when he and his brother had gone to the booth to cast their votes, the petitioner along with other accused persons



armed with Gun, Rifle and Pistol came and fired at his brother with an intention to kill, which hit his brother who died at the spot. The police, after investigation, submitted the final form on 31.01.1993, mentioning therein that the allegation against other accused persons namely, Nitish Kumar and Dularchand Yadav is false and the accusation against the petitioner and two other co-accused persons namely Dilip Singh and Baudhu Yadav was found true but there was inadequate evidence against them. The learned Additional Chief Judicial Magistrate, Barh found prima facie case against the petitioner, Dilip Singh and Baudhu Yadav and accordingly took cognizance against them under Sections 147, 148, 149, 302 and 307 of the Indian Penal Code vide impugned order dated 05.08.2008 and issued non-bailable warrant against them.

3. Learned senior counsel for the petitioner submits that after submission of final form by the police, the learned Magistrate has issued several notices to the informant but neither the informant appeared nor filed any protest petition against submission of the final form. He further submits that the learned Magistrate without appreciating the evidence has taken cognizance against the petitioner in a routine manner.

4. It has further been submitted by the learned



senior counsel for the petitioner that the learned Magistrate, while taking cognizance against the petitioner has not applied his judicial mind. Therefore, this Court may quash the cognizance order dated 05.08.2008.

5. Learned counsel for the petitioner has relied upon a decision of this Court rendered in the case of ***Nitish Kumar Vs. State of Bihar and Another*** reported in ***(2019) 2 PLJR 329*** and submits that the case of the petitioner is squarely covered by the aforesaid decision.

6. Though some learned counsels have appeared in the Court in the connected matter but no one has appeared for the informant.

7. I have heard learned counsel for the petitioner at length. I have also perused the materials available on record including the impugned order by which cognizance has been taken against the petitioner. This case was heard on 22.04.2009 and the following order was passed by a co-ordinate Bench of this Court:-

"This application will be heard.

Issue notice to O.P. No. 2 both by registered post as well as ordinary process for which requisites etc. must be filed within one week.

Till further order further proceeding



in Pandarak P.S. Case No.131 of 1991 pending before the Additional Chief Judicial Magistrate, Barh shall remain stayed"

8. From perusal of the FIR, it appears that the petitioner is named in the FIR. The cognizance has to be taken by the Magistrate after finding a *prima facie* case against the accused. In the present case, the cognizance order cannot be said to be faulty as the Magistrate has found a *prima facie* case against the petitioner on the basis of the materials available on record i.e. the allegations levelled in the FIR and the case diary. At the stage of cognizance, the Magistrate cannot hold a mini trial to come to a conclusion as to whether the petitioner can be convicted on the basis of the evidence collected during investigation or not. In the trial, the witnesses including the informant will depose and it is for the trial Judge to see as to whether the offence of killing the brother of the informant is proved against the petitioner or not.

9. The decision of this Court rendered in the case of *Nitish Kumar Vs. State of Bihar and Another (supra)* is not applicable to the facts of the present case as in the aforesaid case, the petitioner was exonerated by the police during investigation and thereafter final form was submitted by the police, which was accepted by the Court below but one Ashok



Singh, who is not the informant, filed protest-cum-Complaint Petition, which was entertained by the Magistrate and finally the Magistrate took cognizance against the petitioner and considering these facts, this Court quashed the cognizance order. However, in the present case, during the investigation the police found the case against the petitioner true and accordingly, submitted final form and the Court below after analyzing the materials on record has found *prima facie* case against the petitioner and took cognizance against him.

10. In view of the aforesaid reasons, I do not find any illegality and irregularity in the impugned order by which the cognizance has been taken against the petitioner. Accordingly, this application on behalf of the petitioner is dismissed. The trial Court is directed to proceed with the trial immediately and conclude the trial at the earliest.

11. Let a copy of this order be communicated to the District Judge, Patna forthwith through FAX and e-Mail for its compliance.

(Sandeep Kumar, J)

Vikas/Pawan

AFR/NAFR	N.A.F.R.
CAV DATE	15.02.2023
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