

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.317 of 2022

Arising Out of PS. Case No.-103 Year-2020 Thana- PIRBAHOR District- Patna

1. Brajendra Kumar Sinha @ Brijendra Kumar Sinha Son Of Late Shyam Narayan Mehta Resident Of Village - Mahavir Lane, Mussalahpur, P.S.- Pirbahore, Distt.- Patna (Bihar)
2. Jaywanti Devi @ Jayanti Devi W/O Brajendra Kumar Sinha Resident Of Village - Mahavir Lane, Mussalahpur, P.S.- Pirbahore, Distt.- Patna (Bihar)
3. Prity Bharti @ Preeti Bharti @ Preeti Kumari @ Preeti W/O Sri Chandan Kumar Sinha Resident Of Village - Mahavir Lane, Mussalahpur, P.S.- Pirbahore, Distt.- Patna (Bihar)
4. Chandan Kumar @ Chandan Son Of Sri Brajendra Kumar Sinha Resident Of Village - Mahavir Lane, Mussalahpur, P.S.- Pirbahore, Distt.- Patna (Bihar)
5. Arvind Kumar @ Arvind Son Of Sri Brajendra Kumar Sinha Resident Of Village - Mahavir Lane, Mussalahpur, P.S.- Pirbahore, Distt.- Patna (Bihar)

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Saket Gupta, Advocate Mr. Soham Dutta, Advocate Mr. Rahul Raj, Advocate Mr. Baua Jha, Advocate
For the Opposite Party/s :		Mr. Bhanu Pratap Singh Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 20.12.2023

Heard Mr. Saket Gupta, learned counsel for the petitioners and Mr. Bhanu Pratap Singh, learned Additional Public Prosecutor for the State.

2. This application under Section 482 Cr.P.C. has been filed for quashing the order dated 27.10.2021 passed by the learned Court of Additional Sessions Judge-XXVI, Patna



arising out of Pirbahore P.S. Case No. 103 of 2020 by which the learned Additional Sessions Judge-XXVI has been pleased to dismiss the discharge application filed by the petitioners.

3. The aforesaid Pirbahore P.S. Case No. 103 of 2020 was instituted on 17.02.2020 in respect of an occurrence of the offence which took place on the same date on the basis of written report of one Shivendra Kumar Shivam, who is the son of the deceased, namely, Late Dhirendra Kumar Akela. In his written report he alleges that there was a passage dispute between the informant's family and the family of the petitioner and earlier also all the accused persons have threatened to kill the father of the informant. It is further alleged that the petitioner along with other accused persons hatched a conspiracy and killed the father of the informant.

4. That on the statement of the son of the deceased, the F.I.R was instituted and investigation was taken up. After investigation, the police has submitted Final Form No. 80 of 2020 dated 12.05.2020, stating therein that co-accused persons namely, Suraj Kumar, Chandan Kumar @ Khujli @ Machli @ Dalla, Aman Kumar and Akhilesh @ Chedi have been charge sheeted under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act. The police further stated



in the aforesaid charge sheet that the petitioner and other co-accused persons namely, Sujit Mehta, Chhotu Sao, Brajendra Kumar Sinha @ Brijendra Kumar Sinha, Jaywanti Devi @ Jayanti Devi, Prity Bharti @ Preeti Bharti @ Priti Kumari @ Preeti, Chandan Kumar @ Chandan and Arvind Kumar @ Arvind, no evidence was gathered during investigation implicating the role of this petitioner or the case to be false. The learned Chief Judicial Magistrate, Patna differing with the police report took cognizance by an order dated 30.05.2020 of the offences punishable under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act.

5. He further submits that the police after investigation submitted its report vide Final Form No. 80 of 2020 dated 12.05.2020 for the offences punishable under Sections 302, 120B read with Section 34 of the Indian Penal Code and Section 27 of Arms Act. The police report indicates that :-

(a) the accused persons namely, Suraj Kumar, Chandan Kumar @ Khujli @ Machli @ Dalla, Aman Kumar and Akhilesh @ Chedi have been charge sheeted by the Investigating Officer of the case.

(b) the police has submitted the final report against the petitioners and their family members stating therein that no



evidence was gathered implicating the role and involvement of the petitioners and such other persons in the case.

6. It appears from the investigation report of the case that no material was gathered by the police with respect to the involvement of the petitioners and their family members in the alleged murder of late Dhirendra Kumar Akela. No evidence has come indicating any threatening given by the petitioners or their family members, at any point of time, to the deceased or any of this family members and not a single material has come during investigation to suggest/support the involvement of the petitioners including their family members in the alleged murder of late Dhirendra Kumar Akela to constitute a case against the petitioners or their family members.

7. The Chief Judicial Magistrate, Patna while differing with the police report and in a very mechanical manner took cognizance for the offences under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act vide order dated 30.05.2020 and accordingly, summons to all accused persons have been issued. The learned Chief Judicial Magistrate, Patna had not assigned any specific reason while taking different view other than that of the police report.

8. Bare perusal of the investigation report / police



report, it would manifest that no complicity of the petitioners in the matter was found and the learned Chief Judicial Magistrate, Patna without perusing any other materials, otherwise, issued summons to the petitioners in the present case.

9. Mr. Bhanu Pratap Singh, learned Additional Public Prosecutor for the State on the other hand submits that when a quashing application has been filed challenging the order of discharge petition, in that event, this Hon'ble Court has to be cautious and circumspect, for the reason that the application is under Section 482 of the Cr.P.C. He further submits that bare perusal of the impugned order of the Court comes to the conclusion that the reasons are assigned in the order. It appears that the Court has rightly rejected the discharge application of the petitioners. He refers to the judgment reported in **2016 SCC Online Patna, 8303 (Kailash Rai Vs. State of Bihar and others)** held by the Patna High Court. It is clear that if the contents of the complaint or an First Information Report institute offence and when the Court has *prima facie* satisfied that the case is made out against the petitioners, then the Court may took cognizance against the petitioners. He further submits that the petitioners have already challenged the order dated 30.05.2020 passed by the learned Chief Judicial Magistrate in



Pirbahore P.S. Case No. 103 of 2020 in Revision No. 261 of 2021 and the same was dismissed by the learned District and Sessions Judge, vide order dated 20.11.2021.

10. Section 482 of the Cr.P.C. is within the ambit of the High Court's inherent powers and is relatively unusual in criminal law. According to Section 227 of the Code, if the Judge determines that there are sufficient ground to proceed against the accused after hearing the prosecution and the accused arguments and taking into account the case filed and any document submitted with it, he shall differ with the police report. The learned Judge should examines the specific charges levelled against each accused and in accordance with Section 239 of the Code to determine whether the case has been made out against the petitioners or not.

11. Learned Additional Public Prosecutor for the State further submits that from perusal of the order impugned, it manifest that the learned Court has rightly rejected the discharge petition of the petitioners and the order impugned did not call for any interference.

12. Considering the submissions made by the learned Additional Public Prosecutor for the State, this Court is not inclined to entertain this quashing application.



13. In the result, this quashing application stands rejected.

14. Dismissed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	08.12.2022
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