

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23624 of 2023

Arising Out of PS. Case No.-39 Year-2009 Thana- UDAKISHUNGANJ District- Madhepura

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Arun Pandit S/O- Bindeshwari Pandit Village- Amauna Bishanpur PS-
Gwalpara District - Madhepura.

... .. Petitioner

Versus

1. The State of Bihar
2. Bablu Sharma S/o Umakant Sharma R/o Village- Amauna Goriyari Tola, PS-
Udakishanganj (Gwalapara), District - Madhepura

... .. Opposite Parties

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Appearance :

For the Petitioner : Mr. Ashok Kumar Choudhary, Sr. Adv.
Mr. Ujjawal Kumar, Adv.
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 06-08-2024 Heard Mr. Ashok Kumar Choudhary, learned Senior

Counsel for the petitioner and Mr. Jharkhandi Upadhyay,

learned APP for the State.

2. None appears on behalf of the O.P. No.2

despite valid service of notice upon him.

3. The present application has been filed for

quashing the order dated 05.02.2021 passed by learned

Additional Sessions Judge-V, Madhepura, in Sessions Trial

No.120-B of 2009, arising out of Udakishunganj P.S. Case

No.39 of 2009, by which the the charges were framed against

the petitioner under sections 147, 148, 448/149, 302 and 149 of



the Indian Penal Code.

4. The present F.I.R. has been lodged on the basis of the *fardbeyan* of Bablu Sharma recorded on 31.03.2009 at 12:30 hours alleging therein that on previous night 10-12 persons, who are the members of the Nexalite group, entered into the courtyard of his house and called the younger brother of the informant. It has also been alleged that in the light of 'Dhibri' the Informant identified the accused persons including the petitioner. When the younger brother of the informant came out from his house, the accused persons asked him to join their outfit but his brother refused to join their outfit, upon which, the accused persons shot him dead and fled away.

5. After investigation, the Police submitted final report/charge-sheet and supplementary charge sheet against other accused persons and thereafter cognizance was also taken against other co-accused persons. However, the cognizance has not been taken against the petitioner for want of final report/charge-sheet. Thereafter, Sessions Trial No.120 of 2009 was started against co-accused Ashok Sharma, Chhotelal Sharma and Rabindra Sharma under Sections 147, 148, 149, 448, 302 of the Indian Penal Code and Section 27 of the Arms Act. Subsequently, co-accused Laddu Sharma, Shambhu Pandit



and Sukhan Sharma were also sent for trial. Thereafter, the Police submitted Final Form No.28 of 2011 dated 30.06.2011 showing the case to be not true against the petitioner and one Nitesh Yadav. However, during the pendency of the Sessions Trial No.120 of 2009, the learned Additional Sessions Judge-I, Madhepura, vide order dated 13.02.2012 passed in Udakishunganj P.S. Case No.39 of 2009 extended the earlier cognizance order 30.06.2009 to the petitioner and thereafter, the petitioner was summoned in the criminal case and arrest process was issued against him.

6. Earlier, the petitioner had challenged the order dated 13.02.2012 passed in Udakishunganj P.S. Case No. 39 of 2009 before this Court in Criminal Miscellaneous No. 29898 of 2012 but, during the pendency of the said case, charges were framed against the petitioner on 05.02.2021 and as such, the said petition was disposed of on 21.03.2023 with liberty to raise all the point at an appropriate stage.

7. Learned Senior Counsel for the petitioner submits that the FIR and the entire investigation does not contain any specific allegation against the petitioner and not even an iota of evidence has been recorded against the petitioner to suggest his involvement even remotely in the alleged offence.



He further submits that during the materials found during investigation did not disclose any grave suspicion against the petitioner and as such, the trial Court was not justified in framing the charge and proceeding with the trial.

8. It has further been submitted by learned Senior Counsel for the petitioner that the instant case comes within the ambit of such cases where the allegations made in the FIR and investigation, even if they are taken at their face value, does not constitute any offence or make out a case against the petitioner.

9. Learned Senior Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of *Kishori Singh and Ors. vs. the State of Bihar and Anr.* reported in *(2004) 13 SCC 11* and has submitted that the petitioner could not have been summoned by the Magistrate once the final form was submitted by the Police and the same was accepted. The petitioner could have only be summoned in the Session trial and not before the framing of charge. He has further submitted that the order of cognizance and the summoning of the petitioner is illegal, therefore, the subsequent order by which the discharge application of the petitioner has been rejected cannot be sustained.



10. Mr. Jharkhandi Upadhyay, learned APP for the State has supported the impugned order.

11. I have considered the submissions of the parties and perused the materials on record.

12. In a similar circumstance, the Hon'ble Supreme Court in the case of ***Kishori Singh and Ors. vs. the State of Bihar and Anr. (supra)*** has held as follows:

“(8). The questions involved in this appeal are now squarely answered by the two recent decisions of this Court in the case of Raj Kishore Prasad v. State of Bihar and a three-Judge Bench judgment of this Court in the case of Ranjit Singh v. State of Punjab. In the latter case Their Lordships have considered the earlier two-Judge Bench decision of this Court in Raj Kishore Prasad case².

(9). After going through the provisions of the Code of Criminal Procedure and the aforesaid two judgments and on examining the order dated 10-6-1997 passed by the Magistrate, we have no hesitation to come to the conclusion that the Magistrate could not have issued process against those persons who may have been named in the FIR as accused persons, but not charge-sheeted in the charge-sheet that was filed by the police under Section 173 CrPC.

(10). So far as those persons against whom charge-sheet has not been filed, they can be arrayed as "accused persons" in exercise of powers



under Section 319 Cr.P.C. when some evidence or materials are brought on record in course of trial or they could also be arrayed as "accused persons" only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court, on examining the materials, comes to the conclusion that sufficient materials exist against them even though the police might not have filed charge-sheet, as has been explained in the latter three-Judge Bench decision. Neither of the contingencies has arisen in the case in hand."

13. In the present case, though the petitioner was named in the F.I.R. but cognizance had not been taken against the him for want of final form. The Final Form was also submitted finding the case to be not true against the petitioner. However, during the trial the learned Additional Sessions Judge vide order dated 13.02.2012 extended the earlier cognizance order dated 30.06.2009 and by order dated 05.02.2021 framed the charges against the petitioner and other accused persons.

14. Considering the aforesaid facts of this case, this Court is of the view that the petitioner's case is squarely covered by the decision of the Hon'ble Supreme Court rendered in the case of ***Kishori Singh & Ors. vs. State of Bihar & Anr.***



(supra). The cognizance order dated 13.02.2012 and the order dated 05.02.2021 by which charge has been framed are held to be illegal. Accordingly, this application is allowed and the impugned order dated 05.02.2021 passed by learned Additional Sessions Judge-V, Madhepura, is hereby quashed as the cognizance was taken illegally.

(Sandeep Kumar, J)

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