

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37479 of 2016

Arising Out of PS. Case No.-78 Year-2013 Thana- AKBARPUR District- Nawada

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1. Nirmala Devi wife of Anil Sao
 2. Radha Devi wife of Rajan Sao
 3. Rajan Sao Son of Late Ramchandra Sao
 4. Khushboo Kumari Daughter of Anil Sao All are resident of Village- Pachrukhi Kothi, Police Station- Akbarpur in the district of Nawada.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kumari Anuradha wife of Bhola Sao resident of Village- Pachrukhi Kothi, P.S.- Akbarpur in the district of Nawada.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Pramod Kumar Sinha, Advocate Mr. Alexander Ashok, Advocate
For the State	:	Mr. Sanjay Kumar Sharma, APP
For the Opposite Party No.2	:	Mr. Sanjay Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 29-11-2024

The present petitioner has been preferred under Section 482 Cr. PC against the impugned order dated 06.04.2016 passed by Ld. Sessions Judge in Criminal Revision No. 68 of 2015, whereby Ld. Sessions Judge has dismissed the Revision Petition upholding the order dated 14.07.2015, passed by Ld. Additional Chief Judicial Magistrate-II, Nawada in Akbarpur P.S. Case No. 78 of 2013, whereby Ld. Magistrate has taken cognizance of the offence punishable under Sections 341, 323, 324, 326, 379 and 504/34 of the Indian Penal Code against the revisionists.



2. The prosecution case as emerges from the FIR is that on 7.5.2013 when the informant Kumari Anuradha was going from her old house to new one and reached near the gate of house of one Govind Sao, she saw that the accused Rajan Sao was assembling rice and grain in the disputed house. When she protested, the accused Rajan Sao, Anil Sao and the wives and daughters of the aforesaid accused and Ashok Sao, wielding *saif*, *garasa*, iron rod and *lathi* in their hands, started assaulting. Accused Rajan Sao with intent to kill, assaulted her with *saif* in his hands. Consequently, he injured her right side of head. Blood started oozing. Asho Sao, with intent to kill, assaulted her with *Garansa* in his hand and when she tried to defend, thumb of her right hand and middle part of the palm between thumb and the finger got cut. Anil Sao who was wielding iron rod, assaulted her with intent to kill her and when she defended, wrist of her hand got fractured. Wives and daughters of Rajan Sao and Anil Sao also assaulted her with fists. It is also claimed that Anil Tiwary, Dayanand Sao and some others have witnessed the incident. While fleeing away after beating, golden locket of the informant worth Rs.33,000/- was also taken away by elder daughter of Rajan Sao. She further claimed that even previously she and her husband were beaten and on account of this, case No. 211 of 2011 has been lodged. It is also claimed



that the accused persons are of criminal nature. Ashok Sao and Rajan Sao are also accused in Akbarpur P.S. Case No. 138 of 2009 registered for offence of rape.

3. I heard Mr. Devendra Kumar Sinha, Ld. Senior Counsel for the Petitioner, Mr. Sanjay Kumar Sharma, Ld. APP for the State and Mr. Sanjay Kumar Sinha, Ld. counsel for the Informant/Opposite Party No.2.

4. Learned counsel for the petitioners submits that the impugned order dated 06.04.2016 passed by learned Sessions Judge, Nawada is not sustainable in the eye of law, whereby order dated 14.07.2015 passed by learned A.C.J.M., Nawada has taken cognizance against the petitioners under Sections 341, 323, 324, 326, 379 and 504 read with Section 34 of the Indian Penal Code

5. To substantiate his submissions, he further submits that FIR was lodged against all the Petitioners and co-accused, Anil Sao and Ashok Sao. But, after investigation, charge-sheet was submitted only against Anil Sao and Ashok Sao and all the Petitioners were exonerated. But learned A.C.J.M., without giving any reason to disagree with the opinion of the police, took cognizance against the petitioners also. But this fact has not been appreciated by learned Sessions Judge in the revision proceeding.



6. However, learned APP for the State and learned counsel for the Opposite Party No.2 defend the impugned order submitting that there is no illegality or infirmity in the impugned order.

7. I perused the impugned order and material on record including the case diary.

8. I find that F.I.R. was lodged against the petitioners and co-accused Anil Sao and Ashok Sao for offences punishable under Sections 341, 323, 324, 325, 307, 379 and 504 read with Section 34 of the Indian Penal Code and after investigation, charge sheet was submitted only against Anil Sao and Ashok Sao under Sections 341, 323, 324, 325, 307, 379 and 504 read with Section 34 of the Indian Penal Code and finding the petitioners innocent, the case was closed against them.

9. However, at the time of cognizance, learned A.C.J.M. has taken cognizance not only against Anil Sao and Ashok Sao but also against the petitioners, who were exonerated by the police after investigation, stating that after perusal of the F.I.R. and case diary, there is sufficient material found against the petitioners in para Nos. 6,7,8,10,11,19,20 and 21 of the case diary. Even the Revisional Court has found no illegality or impropriety in the cognizance order passed by learned A.C.J.M. against the



petitioners stating that there is sufficient material against the petitioners in the written report as well as statement of the informant and witness Anil Tiwary under Section 161 of the Cr.PC.

10. From the perusal of the case diary and F.I.R., it is found that there are clear statements of the witnesses made under Section 161 of Cr.PC that all the petitioners herein have participated in the occurrence against the victim.

11. As such, *prima facie* case is clearly made out against the petitioners to take cognizance of the offence against them.

12. Hence, I find no illegality or infirmity in the cognizance order dated 14.07.2015 passed by learned A.C.J.M., Nawada and the impugned order dated 06.04.2016 passed by revisional Court.

13. Hence, the present petition is dismissed.

14. However, the occurrence had taken place long back in 2013. Hence, learned Trial Court is directed to expedite the matter and hear the matter on day to day basis.

(Jitendra Kumar, J.)

S.Ali/Ravishankar

AFR/NAFR	NAFR
CAV DATE	N.A.
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