

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20319 of 2016

Arising Out of PS. Case No.-23 Year-2014 Thana- BAJPATTI District- Sitamarhi

=====

Birendra Rai @ Birendra Kumar Son of Rambilash Rai, Resident of village-
Basaha, P.S.- Bajpatti, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sandesh Yadav, Project Manager, Brahamputra Construction Company S/o
Mani Ram Singh Yadav R/o Village-Kanpur, PS-Gurudeo, District-Kanpur

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Prabhat Kumar, Advocate

For the Opposite Party/s : Mr. Sanjay Kr. Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

9 02-12-2024 Heard Mr. Prabhat Kumar, learned counsel for the

Petitioner and Mr. Sanjay Kr. Singh, learned APP for the State.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to quash the order dated 21.11.2015 passed by learned Judicial Magistrate, Pupri at Sitamarhi in connection with Bajpatti P.S. Case No. 23 of 2014 and T.R. No. 2005/15 whereby and whereunder the learned trial Court has taken cognizance of the offences punishable under Sections 341, 323, 307, 325 and 504/34 of the Indian Penal Code (in short 'IPC') against the petitioner and other co-accused person.

3. Learned counsel appearing for the petitioner



submits that although the petitioner is named in the FIR but against him, there is no specific allegation in the entire FIR and he is said to be the member of the alleged mob and after investigation, the petitioner was not sent up and the specific allegation is against the co-accused Harendra Rai who happens to be brother of this petitioner. Learned counsel further submits that in fact, the employees of the Brahmaputra Construction Company were illegally excavating soil from the land of the farmers in violation of this Court's order passed in C.W.J.C. No. 2490 of 2010 which was being opposed by a mob and further, the alleged assault was not intentional rather the same was a result of a resistance made by the said mob against the illegal act of the Brahmaputra Construction Company. It is further submitted that after the cognizance, the trial of the petitioner has started but till date no prosecution witness has turned up.

4. On the other hand, learned APP appearing for the State has opposed this petition and submitted that there is sufficient material to attract the alleged offences against this petitioner as he was not only present at the alleged place of occurrence but also allegedly participated in the same. Though he is said to be the member of the mob but the cognizance has been taken with the aid of Section 34 of IPC in respect of other



alleged offences.

5. Heard both the sides and perused the order impugned, FIR and the case diary. The petitioner is named in the FIR and as per allegations, the work of a particular construction company was being opposed by the accused persons including this petitioner at the relevant time of the occurrence, though the petitioner has taken the plea that the excavation of soil by the alleged construction company was completely wrong and illegal and also in violation of this Court's order dated 02.05.2011 passed in C.W.J.C. No. 2490 of 2010 but such defence cannot be accepted at this stage, as no one is permitted to take law and order in his hand and in the instant matter, as per allegation, this petitioner and some other co-accused persons who are named in the FIR along with some unknown persons assaulted a tractor driver relating to the said construction company and caused head injury to him and also took away the batteries of the tractor and thereafter, threatened the prosecution party and in this regard, the restatement of the informant and statements of some material witnesses, whose details are mentioned in paragraph nos. 4 and 5, are relevant and both the witnesses revealed the presence of this petitioner at the place of occurrence along with the other co-accused persons. Merely by this fact, that any



specific role has not been attributed to this petitioner in the commission of the alleged occurrence, it will not be proper to exonerate the petitioner from the criminal liabilities having arisen against him and the order impugned taking cognizance of the alleged offences has been rightly passed. Accordingly, this Court finds no merit in this Criminal Miscellaneous Petition, so, it stands dismissed.

6. As the instant matter relates to the year 2014, so, considering this aspect, the trial court is directed to take steps to expedite the trial of the petitioner and conclude the same in the next one year from today.

(Shailendra Singh, J)

maynaz/-

U		T	
---	--	---	--

