

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1054 of 2018

Arising Out of PS. Case No.-243 Year-2016 Thana- COMPLAINT CASE District- Lakhisarai

Chhedani Devi, Widow of Late Batoran Kora, resident of Village- Bangali
Bandh, Mangal Tola, P.O.- Loshghani, P.S.- Piri Bazaar, District - Lakhisarai.
... .. Petitioner/s

Versus

1. State of Bihar
2. Ashok Kumar, Son of Late Narayan Sahi, Resident of Village- Naopi, P.S.-
Runnisaidpur, District- Sitamarhi, the then Superintendent of Police,
Lakhisarai.
... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bijay Kumar Pandey, Advocate Mr. Mukesh Kumar, Advocate
For the Respondent/s	:	Mr. Brajendra Nath Pandey, APP
For the Opposite Party	:	Mr. Arvind Kumar, Advocate Mr. Shambhu Shankar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 23-04-2024 1. The instant Revision is directed against an order dated 21st of July, 2018, passed by the learned Sessions Judge, Lakhisarai in Cr. Revision No. 15 of 2018, whereby and whereunder, the learned Sessions Judge quashed and set aside the order of taking cognizance against the Opposite Party No. 2 in connection with Complaint Case No. 243(C) of 2016.

2. Relevant facts required for the disposal of the instant Revision is as follows:

(i) The husband of the petitioner was arrested on 7th of April, 2016 at 07.00 A.M. by the Opposite Party No. 2 being assisted by other Police Officer. The Opposite Party No. 2 was the Superintendent of Police, Lakhisarai at the relevant point of



time. After arrest, the husband of the petitioner was brutally assaulted by the Police, while he was in custody and on the following date of arrest, he expired in the hospital. The petitioner lodged a complaint against Opposite Party No. 2 and the other Police Officers, alleging custodial violence and murder of her husband. The learned Judicial Magistrate registered the said complaint as Complaint Case No. 243 (C) of 2016 and took cognizance of offence under Section 302 / 120B of the Indian Penal Code against the accused persons including the Opposite Party No. 2.

(ii) The Opposite Party No. 2 filed a Criminal Revision against the aforesaid order, dated 29th of January, 2018, which was registered as Cr. Revision No. 15 of 2018. The learned Sessions Judge, Lakhisarai disposed of the said Criminal Revision *vide* order dated 21st of July, 2018, setting aside the order passed by the learned Judicial Magistrate, 1st Class in Complaint Case No. 243(C) of 2016 in so far as it relates to the Opposite Party No. 2, the then Superintendent of Police.

(iii) The learned Sessions Judge in his order impugned held that the learned Judicial Magistrate passed the order dated 29th of January, 2018 in a mechanical manner



without applying judicial mind. The learned Magistrate failed to assign any reason and discussion about the materials which he found during inquiry, on the basis of which he found prima facie case against the Opposite Party No. 2. Thus, the order dated 29th of January, 2018 is liable to be set aside. Further more, it was held by the learned Sessions Judge that the Opposite Party No. 2 was Superintendent of Police on the date of alleged commission of offence. Therefore, before lodging the prosecution, the complainant ought to have taken sanction under Section 197 of the Code of Criminal Procedure. Such sanction, having not been taken, the order of cognizance was bad in law.

3. The aforesaid order, dated 21st of July, 2018 is under challenge in the instant Revision.

4. The Opposite Party No. 2 has filed a counter affidavit, denying all allegations made against him in the instant Revision. It is specifically stated by the Opposite Party No. 2 that the husband of the petitioner, since deceased, was arrested in connection with Piribazar P. S. Case No. 31 of 2016, under Section 25(1-b)/A/26 of the Arms Act, 1959 and Sections 16/18/19/20/23 of UAPA Act, during raid, conducted under the leadership of Additional Superintendent of Police, Operation and other Police Officers. After arrest, he was brought to



Piribazar Police Station where he died in police custody. After his death, Lakhisarai Kabaiya P.S. U.D. Case No. 03 of 2016 was registered.

5. As the husband of the petitioner died in police custody, an enquiry was conducted by the learned Judicial Magistrate, 1st Class, Lakhisarai under Section 176 of the Cr.P.C., On 29th of August, 2016 and after a detailed enquiry, he submitted a report, stating, *inter alia*, that all Police Officers including Additional Superintendent of Police, Operation, who was present at Piri Bazar Police Station during interrogation of the deceased, except SHO, Piri Bazar, namely, Vinod Ram and Cr.P.F. Battalions and held liable for the death of the deceased, Batoran Kora due to negligent act on the part of the Police Officers exceeding their power and authority. Thus, the enquiry report under Section 176 of the Cr.P.C. clearly suggests that the Superintendent of Police, Lakhisarai was not involved in the raid and interrogation of the deceased while in police custody.

6. The learned Advocate for the Opposite Party No. 2 submits that the complainant failed to produce any evidence to the effect that the Opposite Party No. 2 was involved in the alleged offence. Therefore, the learned Sessions Judge rightly quashed and set aside the order of taking cognizance, which



relates to the Opposite Party No. 2.

7. The learned Advocate on behalf of the petitioner, on the other hand, submits that when the Judicial Magistrate took cognizance of offence against the Opposite Party No. 2, such order should not be interfered with, even if the order of taking cognizance is required to be interfered, such power of quashment of proceedings can be exercised by the High Court only in exceptional circumstances and that too when a prima facie case is not made out against the accused. It is submitted by the learned Advocate on behalf of the petitioner that the impugned order is in the nature of quashment of proceeding, which can only be passed by the High Court under Section 482 of the Cr.P.C. The learned Sessions Judge has no authority to pass such order under the provision of Section 399 read with Section 401 of the Cr.P.C.

8. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in ***Rakhi Mishra v. State of Bihar and Ors.***, reported in ***(2017) 16 SCC 772***, equivalent to ***2017 (4) PLJR 21 (SC)***.

9. It is needless to say that at the stage of cognizance and summoning, the Magistrate is required to apply his judicial mind only with a view to take cognizance of offence



to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or material or arguments nor is he required to evaluate the merits of the materials or evidence of the complaint, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not. If the learned Magistrate is prima facie satisfied that there is sufficient ground for further proceeding of a criminal case, he is entitled to take cognizance.

10. Relying on the aforesaid principle laid down in the case of *Sonu Gupta v. Deepak Gupta*, reported in (2015) 3 SCC 424, let me decide the instant Revision.

11. It is true that in the complaint, the petitioner alleged that the raid was conducted under the leadership of the Superintendent of Police, Lakhisarai, but during investigation under Section 176 of the Cr.P.C., it is ascertained that the raid was conducted under the leadership of the Additional Superintendent of Police, Operation, Lakhisarai. The husband of the petitioner was arrested by the raiding party at about 07.00 A.M. The witnesses never stated any involvement of the Opposite Party No. 2 in the raid. Therefore, when Opposite



Party No. 2 was not at all involved in arresting or interrogating the deceased husband of the petitioner, the Court would not have taken cognizance against Opposite Party No. 2.

12. In view of the aforesaid facts and circumstances, I do not find any illegality or material irregularity in the impugned order and, accordingly, the instant Revision is dismissed, on contest.

13. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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