

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38403 of 2016

Arising Out of PS. Case No.-466 Year-2015 Thana- GAYA MUFASIL District- Gaya

Rajesh Ram @ Rajesh Paswan son of Late Surendra Ram, Resident of
Village- Amokhar, P.S.- Paraiya, District- Gaya.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 41524 of 2016

Arising Out of PS. Case No.-466 Year-2015 Thana- GAYA MUFASIL District- Gaya

Bablu Kumar @ Bablu Paswan son of Late Ambika Prasad R/o Mohalla-
Bageshwara, P.S.- Delha, Distt- Gaya.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 38403 of 2016)

For the Petitioner/s : Mr.Ritwaj Raman, Adv.

For the Opposite Party/s : Mr.Sri Khurshid Anwar, APP

(In CRIMINAL MISCELLANEOUS No. 41524 of 2016)

For the Petitioner/s : Mr.Surendra Kumar Mishra, Adv.

For the Opposite Party/s : Mr.Md. Arif, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

9 19-11-2024 Since both the petitions have arisen out of the same

impugned order and the grounds taken in these petitions are

same hence, they have been heard together and are being

disposed of by a common order.

2. Heard Mr. Ritwaj Raman and Mr. Surendra Kumar

Mishra, learned counsel for the petitioners and Mr. Khurshid



Anwar and Mr. Arif, learned APPs for the State.

3. These applications have been filed for quashing the order dated 03.03.2016 passed by learned Chief Judicial Magistrate, Gaya in Gaya Muffasil P.S. case No. 466 of 2015, G.R. No. 6583 of 2015 whereby and whereunder cognizance was taken against the petitioners of the offences punishable under sections 25(1B)(a), 26 and 35 of the Arms Act.

4. It is submitted on behalf of the petitioners that petitioner, Rajesh Paswan is a teacher and petitioner, Bablu Kumar @ Bablu Paswan is a Railway employee and the petitioners are relatives of co-accused, Ashok Paswan who has land dispute with the informant and the petitioners have been falsely implicated in this case only with a view to lower down their social prestige and to spoil their future. It is further submitted that the alleged arms and ammunition were recovered from the eastern bank of *Falgu* river and the same were not recovered from the conscious possession of the petitioners. It is further submitted that though the petitioners were made accused in Gaya (M) P.S. case No. 463 of 2015 but they were not sent up for trial. It is further submitted that during the entire investigation the I.O. could not collect any cogent evidence against the petitioners and no independent witness was



examined by the I.O. and even if the entire allegation in the F.I.R. and the materials collected during the course of investigation are taken into account and considered to be true, no offence under any section of Arms Act is made out against the petitioners.

5. Heard both sides and perused the order impugned. By the impugned order the learned C.J.M., Gaya has taken cognizance of the offences punishable under sections 25(1B) (a), 26 and 35 of the Arms Act against the petitioners. As per prosecution story, the police party while conducting investigation in connection with Gaya (M) P.S. case No. 463 of 2015 registered under sections 302, 307, 379, 380 read with section 34 of the IPC and section 27 of Arms Act raided the house of co-accused, Ashok Paswan where he was apprehended and during the course of interrogation he accepted that he and other co-accused persons killed Tapeshwari Devi, Deepak Paswan and also injured his uncle and in following with the disclosure made by the said co-accused the police recovered the alleged firearms from the bank of *Falgu* river. Accordingly, the prosecution case in respect of the alleged offences under Arms Act is mainly based on the disclosure made by the apprehended co-accused, Ashok Paswan leading to the recovery of the



alleged firearms and both the petitioners are not said to have been apprehended with the said co-accused and there is no material to show *prima facie* involvement of the petitioners in connection with the seized firearms and it is important to mention that after the investigation the police did not send up the petitioners for trial and while differing with the conclusion of the police, the learned Magistrate took cognizance against the petitioners without giving any reason and the said order was passed in mechanical manner without applying judicial mind. Here it is pertinent to mention that in respect of the petitioners' involvement in the alleged offences of the Arms Act of which cognizance has been taken, the prosecution is mainly relying upon the statement of the apprehended co-accused, Ashok Paswan which has no evidentiary value and further the said co-accused has not revealed the names of the petitioners as being involved in the alleged offences and these materials persuaded this court to form the opinion that there is no *prima facie* material to attract the alleged offences under Arms Act against the petitioners and putting the petitioners on trial for the alleged offences will be a blatant abuse of the process of the court. As such, the order impugned taking cognizance of the alleged offences against the petitioners is hereby set aside and all further



proceedings having arisen against them after the cognizance order in connection with Gaya (M) P.S. Case No. 466 of 2015 also stand set aside. In the result the instant petitions are allowed.

(Shailendra Singh, J)

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