

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42782 of 2023

Arising Out of PS. Case No.-679 Year-2019 Thana- MAHUA District- Vaishali

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1. MUKESH RAI @ MUKESH KUMAR KHANNA SON OF LATE BRAJ NANDAN RAI VILLAGE CHAK MAJAHID, PS- MAHUA, DISTRICT- VAISHALI
 2. RAKESH RAI SON OF LATE BRAJ NANDAN RAI RESIDENT OF VILLAGE- CHAK MAJAHID, PS- MAHUA, DISTRICT- VAISHALI
 3. AVINASH RAI SON OF LATE BRAJ NANDAN RAI RESIDENT OF VILLAGE- CHAK MAJAHID, PS- MAHUA, DISTRICT- VAISHALI
 4. BADAL KUMAR SON OF RAKESH RAI RESIDENT OF VILLAGE- CHAK MAJAHID, PS- MAHUA, DISTRICT- VAISHALI
 5. ABHISHEK KUMAR SON OF RAM SINHASAN RAI RESIDENT OF VILLAGE- CHAK MAJAHID, PS- MAHUA, DISTRICT- VAISHALI
 6. AKASH KUMAR SON OF RAM SINHASAN RAI RESIDENT OF VILLAGE- CHAK MAJAHID, PS- MAHUA, DISTRICT- VAISHALI
 7. ABHIMANYU KUMAR SON OF LATE SHITAL RAI RESIDENT OF VILLAGE- CHAK MAJAHID, PS- MAHUA, DISTRICT- VAISHALI

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. AMIT KUMAR SON OF DINESH RAI RESIDENT OF VILLAGE- SADAPUR MAHUA, PS- MAHUA, DISTRICT- VAISHALI

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Naresh Chandra Verma
For the Opposite Party/s : Mrs. Sharda Kumari

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 02-12-2024 Heard learned counsel for the petitioners and learned APP for the State.

2. This application has been filed for quashing the order dated 19.01.2023 passed by learned Judicial Magistrate 1st Class, Vaishali at Hajipur in G.R. No. 6740 of 2019 arising out



of Mahua P.S. Case No. 679 of 2019 whereby cognizance has been taken against the petitioner for offence under sections 307, 323, 506, 504 read with section 34 of the Indian Penal Code and under section 27 of the Arms Act.

3. As per the prosecution case, the petitioners and the co-accused persons armed with revolver and lathi came to the door of the informant and started abusing his father. When the informant protested, in the meantime, on the exhortation of the petitioner no. 2 Rakesh Rai, the petitioner no. 1 fired on the informant which hit his left arm causing severe injury. When the informant's mother came to rescue, the other accused persons also assaulted her and disrobed her. On Halla, villagers came there, thereafter all the accused fled away from there.

4. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case due to ulterior motive. It is further submitted that from perusal of the FIR, it appears that there is no allegation against the petitioners no. 3, 5, 6 and 7 of any assault or any overt act still they have been made accused. It is further submitted that during the course of the investigation, a large number of independent witnesses including Pramod Kumar, Arun Rai and Ranjeet Rai have stated that no any occurrence took place in the house of Amit Kumar



(Informant) and no any firing was made.

5. It is further submitted that the Sub Divisional Police Officer supervised the case and found that the quarrel took place due to PACS election and there is no evidence of any firing and the wound has been inflicted by burning pointed stick and therefore no case under section 307 of the Indian Penal Code or Arms Act is made out and he directed the Investigating Officer to submit charge sheet for offence under sections 341, 323, 504, 506 and read with section 34 of the Indian Penal Code only.

6. It is further submitted that Inspector General of Police, Tirhut Range Muzaffarpur has also made review of this case and also not found any case under section 307 of Indian Penal Code and directed the I.O. to proceed with this case finding true under sections 341, 323, 504, 506 and read with section 34 of the Indian Penal Code. In spite of the aforesaid position, the Investigating Officer has submitted charge sheet against the petitioners for offence under sections 307, 341, 323, 504 and 506 read with section 34 of the IPC and 27 of the Arms Act against all the accused persons and after receipt of the charge-sheet, learned Judicial Magistrate took cognizance for offence under sections 307, 323, 506, 504 read with section 34



of the IPC and u/s 27 of the Arms Act against the petitioners by impugned order dated 19.01.2023.

7. Learned APP for the State has vehemently opposed the quashing application of the petitioners by submitting that as per the FIR, there is direct allegation against the petitioner no. 2 of firing on the informant and the other accused persons are also involved in the alleged crime.

8. Considering the above facts and circumstances of the case, this court do not find any substance in the contention of the learned counsel for the petitioner.

9. Accordingly, the present quashing application is dismissed.

(Chandra Prakash Singh, J)

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