

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73067 of 2023

Arising Out of PS. Case No.-28 Year-2018 Thana- LADAIYATAR District- Munger

1. RAJENDRA BIND S/O KASHO BIND VILLAGE- MARPAKALA, AMARI, PS. LARAIYATAND (DHARHARA), DIST. MUNGER
2. SURENDRA BIND S/O DULO BIND RESIDENT OF NAYA BAZAR NEAR S.P. RESIDENCE, PS. LAKHISARAI, DIST. LAKHISARAI
3. VISHAN BIND @ BISHUN BIND S/O RAJENDRA BIND VILLAGE- MARPAKALA, AMARI, PS. LARAIYATAND (DHARHARA), DIST. MUNGER
4. KISHAN BIND S/O RAJENDRA BIND VILLAGE- MARPAKALA, AMARI, PS. LARAIYATAND (DHARHARA), DIST. MUNGER

... .. Petitioner/s

Versus

1. The State of Bihar BIHAR
2. Sonarwa Devi W/o Mahendra Choudhary R/o vill - Bakiyabad, P.S. - Haisi, Distt. - Lakhisarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar
For the Opposite Party/s	:	Mr. Ajit Kumar
For the State	:	Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 20-08-2024 Heard the parties.

2. This application has been filed on behalf of the petitioners for quashing the order dated 28.03.2019 passed by learned Judicial Magistrate, 1st Class, Munger in Laraiyatand P.S. Case No. 28 of 2018.

3. One Guddu Chaudhary was kidnapped and killed. A substantial FIR being Halsi P.S. Case No. 117 of 2018 was registered under Section 363 and 365 of the Indian Penal Code and after recovery of the body of the Guddu Chaudhary, Section



302, 201/34 of the Indian Penal Code was also added and the trial of that case is going on. Another FIR being Laraiyand P.S. Case No. 28 of 2018 was registered for recovery of an unknown dead body which was subsequently found to be of Guddu Chaudhary.

4. The police investigated the case and submitted the final form because a substantial case was already going on vide Halsi P.S. Case No. 117 of 2018. After the police submitted the final form, the Magistrate has differed with the final form and had taken cognizance against the petitioners. It has been submitted by the learned counsel for the petitioners that the Magistrate has taken cognizance without any application of mind. He has not considered the fact that Halsi P.S. Case No. 117 of 2018 was already going on registered for the kidnapping and murder of the victim.

5. Learned counsel for the petitioner has relied upon the case of the Hon'ble Supreme Court passed in the case of *M/s. Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors.* reported in *(1998) 5 SCC 749*. He also relies upon the judgment of the Hon'ble Supreme Court passed in the Case of *T.T. Antony Vs. State of Kerala and Ors.* reported in *(2001) 6 SCC 181*.



6. Learned counsel for the State and the learned counsel for the O.P. No. 02 has opposed the application of the petitioners and has submitted that both the FIRs should continue.

7. I have considered the submissions of the parties.

8. Considering the facts of the case, I am of the view that the petitioners cannot be prosecuted for the same offence twice.

9. In view of the law laid down by the Hon'ble Supreme Court passed in the case of *M/s. Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Ors.(Supra)* and also in view of the law laid down by the Hon'ble Supreme Court in the case of *T.T. Antony Vs. State of Kerala and Ors. (Supra)*, this application is allowed.

10. Accordingly, the order dated 28.03.2019 passed by learned Judicial Magistrate, 1st Class, Munger in Laraiyatand P.S. Case No. 28 of 2018 is hereby quashed.

(Sandeep Kumar, J)

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