

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9947 of 2020

Arising Out of PS. Case No.-189 Year-2016 Thana- BARAUNI District- Begusarai

1. Rajendra Singh Son Of Late Babu Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai
2. Bauwa Kumar Son Of Rajendra Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai
3. Amit Singh Son Of Rajendra Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai
4. Pintu Kumar Son Of Virendra Singh @ Birendra Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai
5. Virendra Singh @ Birendra Singh Son Of Late Lalbabu Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai
6. Subodh Singh Son Of Late Lal Babu Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai
7. Murari Singh @ Murari Kumar Singh @ Murari Kumar Son Of Late Surendra Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai
8. Tripurari Singh @ Tripurati Kumar Son Of Late Surendra Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai
9. Anamol Anand @ Anmol Singh Son Of Rajendra Singh Resident Of Village - Chakballi, P.S.- Barauni (Refinery O.P.), District- Begusarai

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kanchan Kumari Wife Of Keshav Kumar Resident Of Village - Sihama, P.S.- Matihani, District- Begusarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar, Advocate
For the Opposite Party/s	:	Mr. Ashok Kumar, Advocate
For the O.P. No. 2	:	Mrs. Vaishnavi Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER



3 03-02-2026 Heard the learned counsel for the petitioners, the learned APP for the State and the learned counsel for the O.P. No. 2.

2. This application has been filed for quashing order dated 28.8.2018 passed by Learned Chief Judicial Magistrate, Begusarai in Barauni P.S. Case No. 189/16 whereby and where under learned Magistrate took cognizance against petitioners for offences punishable under sections 147, 148, 149, 323, 337, 504 and 427 of the Indian Penal Code as well as for quashing the order dated 24/5/2019 passed by learned Additional Sessions Judge-IX, Begusarai passed in Cr. Revision No 348/18 whereby the Court below disposed off the revision application filed by the petitioners against the aforesaid cognizance order dated 28/8/2018 in Barauni P.S. Case No. 189/16.

3. The prosecution case, in short, as disclosed in the petition of complaint, is that on 15/08/2011 at about 6:00 in the morning, all accused persons, including the petitioners, are said to have reached the house of opposite party No. 2. Petitioner No. 1, who was carrying a rifle in his hand, started abusing and asked about Arun. On being opposed by opposite party No. 2 and her mother, Rajendra Singh is said to have assaulted her with the butt portion of the rifle on her abdomen and other parts,



due to which she suffered pain in her abdomen as she was carrying a pregnancy of 6 months. They are also said to have threatened her to withdraw a case before the D.C.L.R., otherwise, the entire family would be killed. It is further disclosed by the informant that the matter was reported to the police immediately, and a written application in this regard was also given. The police detained the informant, her sisters Seema Kumari, Priya Kumari, and Rinku Devi at the police station the whole day. She was taken to the Primary Health Centre, Barauni, for treatment and from there, she was referred to the Sadar Hospital. It is alleged that she was not taken to the Sadar Hospital and on 26/08/2011, she was allowed to leave the Police Station and was taken to the clinic of Dr. Ram Naresh Singh, but abortion could not be averted. On the basis of Complaint Case No. 935/2016, an FIR vide Barauni P.S. Case No. 189/16 was registered. The investigation was completed, the police submitted a charge sheet.

4. The learned counsel for the petitioners submits that the petitioners are innocent, have committed no offence, and have been falsely implicated in the present case with an oblique purpose and ulterior motive. It is stated that the present case has been lodged to put pressure on the petitioners to compromise in



Barauni (Refinery O.P.) P.S. Case No. 209/11 and also to create a defense. He further submits that for an occurrence said to have taken place on 25.08.2011 at about 6:00 in the morning, a complaint case was filed on 22/04/2016 on behalf of the complainant/opposite party No. 2 before the learned Chief Judicial Magistrate, Begusarai, which was forwarded to the police on 23.04.2016 under Section 156(3) of the Cr.P.C. for the institution of F.I.R. and investigation thereof. Accordingly, the present FIR was registered on 11/05/2016.

5. The learned counsel for the petitioner further submits that the petitioners and the prosecution side are agnates, and there was a land dispute between them. The prosecution side had opened a drainage in the field of the petitioners, and on 25.08.2011, when the petitioners tried to stop them, the brother of opposite party No. 2, namely Chandan Singh, opened fire from his rifle, hitting Avinash @ Vinit, who died on the spot. Other accused persons also fired, causing injuries to Anmol and Pintu Kumar. Narrating the entire occurrence, petitioner No. 1 gave a written report, on the basis of which Barauni (Refinery O.P.) P.S. Case No. 209/11 was registered against the father, mother, and two brothers of opposite party No. 2, as well as other persons, for offences punishable under Sections 147, 148,



149, 323, 307, 302 and 337 of the I.P.C. and Section 27 of the Arms Act. He further submits that on the same day, i.e., 25/08/2011, the brother of opposite party No. 2, namely Neeraj Kumar Singh, filed Complaint Case No. 1849C/2011 before the learned Chief Judicial Magistrate, Begusarai, against all the petitioners, alleging false and frivolous allegations and concocting a story. The case was dismissed by order dated 06/08/2013 passed by the learned Judicial Magistrate, 1st Class, Begusarai, under Section 203 of the Code of Criminal Procedure, finding that the complaint was lodged to create pressure and save themselves from the murder case.

6. The learned counsel for the petitioner further submits that it would not be out of place to mention here that in the aforesaid complaint case, there is no mention of the fact that opposite party No. 2 was assaulted by petitioner No. 1, due to which she suffered a miscarriage. After investigation, the police submitted a charge sheet, finding the accusations to be true for offences under Sections 147, 148, 149, 323, 337, 504 and 427 of the Indian Penal Code, *vide* Charge Sheet No. 323/18 dated 13/07/2018. By the impugned order dated 28.08.2018 passed by the learned Chief Judicial Magistrate, Begusarai, cognizance was taken against the petitioners under Sections 147, 148, 149,



323, 337, 504 and 427 of the Indian Penal Code, in complete disregard of Section 468 of the Code of Criminal Procedure.

7. He further submits that the petitioners challenged the aforesaid order of cognizance before the learned Sessions Judge, Begusarai, *vide* Cr. Revision No. 348/18, which was disposed of by order dated 24.05.2019 passed by learned Additional Sessions Judge-IX, Begusarai. While disposing of the revision application, it was observed that the court has been given ample power under Section 473 of the Cr.P.C. to condone the delay and take cognizance even after the period of limitation, if it finds that the interest of justice requires it. It has further been observed that “So obviously, after being aware of the fact that cognizance is being taken after the lapse of seven years, the court has taken cognizance after hearing both parties, and it is deemed that, in the interest of justice, the court had condoned the delay.”

8. The learned counsel for the O.P. No. 2 has vehemently opposed the application of the petitioner and has submitted that the factual matrix, in brief, is that two cases were lodged concerning the same occurrence that took place on 25.08.2011. One case, Barauni (Refinery O.P.) P.S. Case No. 209/11, was lodged by the present petitioners under Sections



147, 148, 149, 323, 324, 307, 302, 337 of the Indian Penal Code (IPC) and Section 27 of the Arms Act. The other case, Barauni P.S. Case No. 189/16, was lodged by the O.P. No. 2 of the present application under Sections 149, 313, 449, 452, 120(B), and 34 IPC. She further submits that the case filed by the petitioners was committed for trial after investigation and has been numbered as Sessions Trial No. 88/12. In the case filed by O.P. No. 2, after much effort and following the leave granted by this Court in Cr. WJC No. 624/15, the police submitted a chargesheet under Sections 147, 148, 149, 323, 337, 504, and 427 IPC. Cognizance was subsequently taken *vide* order dated 28.08.2018, which is one of the orders being challenged in the present application. Thereafter, O.P. No. 2 filed a petition for the transfer of the case lodged by her, seeking that it be tried alongside the case lodged by the petitioners. The petition was allowed by the Learned Sessions Judge, Begusarai, *vide* order dated 24.09.2018.

9. She further submits that the records of the case filed by O.P. No. 2 were transferred from the Court of the Learned Judicial Magistrate 2nd Class, Begusarai, to the Court of the Learned Additional District Judge-I, Begusarai. Subsequently, both the petitioners and O.P. No. 2 moved before



the revisional court in Cr. Revision No. 348/18 and Cr. Revision No. 307/18, respectively, challenging the order taking cognizance. The petitioners' revision application was partly allowed by the order dated 24.05.2019, with respect to the offences under Sections 337 and 427 IPC, while directing that the order taking cognizance for the remaining sections should remain intact.

10. The learned counsel for the O.P. No. 2 further submits that on the same day, O.P. No. 2's application was dismissed by the same court, holding that the order does not suffer from any illegality, impropriety, or jurisdictional error. She further submits that at present, the case filed by O.P. No. 2 is ongoing and is scheduled for charge before the Learned Additional Sessions Judge XI, Begusarai, numbered as T.R. No. 213/19. However, due to the petitioners' willful conduct, charges are not being framed in the said case. Moreover, without bringing these facts to the attention of this Hon'ble Court, the petitioners have been granted a stay in the case lodged by O.P. No. 2. This is causing significant prejudice to O.P. No. 2. Therefore, in the interests of justice, O.P. No. 2 prays that either the present application be heard and disposed of at the earliest or the present application be dismissed. Alternatively, any other



relief or direction as deemed appropriate by this Court may be granted.

11. It is further submitted that when opposing the prayer for bail in the case filed by the petitioners, the petitioners had undertaken to cooperate with the trial at every stage. However, they have failed to fulfill this undertaking at any stage of the proceedings. Once there has been a judicial order directing that the present case be heard alongside the other case, and the records have already been transferred to the appropriate court where the case is now pending for charge, it is wholly unjustified that the petitioners, without challenging the said orders and without bringing them to the attention of this Court, filed the present application. As a result, a stay order was passed in their favour regarding the order taking cognizance.

12. Upon considering the facts and circumstances of the case, and after hearing the arguments from both sides, I am of the view that in the present case, cognizance was taken by the Learned Chief Judicial Magistrate, Begusarai, despite a significant delay of over seven years from the date of the alleged occurrence. The learned Sessions Judge, in the revision application, rightly observed that the delay in filing the complaint and taking cognizance should have been condoned in



the interest of justice, relying on Section 473 of the Cr.P.C. However, the circumstances leading to such delay have not been sufficiently explained, and there is no concrete evidence to justify the delay to the satisfaction of the court.

13. Furthermore, it is evident that the case lodged by O.P. No. 2 against the petitioners appears to have been filed as a counterblast to the case lodged by the petitioners in Barauni (Refinery O.P.) P.S. Case No. 209/11, which is pending trial. The orders under challenge suffer from procedural irregularities and a lack of proper justification for the delay in taking cognizance. As such, the continuation of these proceedings against the petitioners is unjustified and would amount to an abuse of the process of law.

14. In view of the above, this application stands allowed. Accordingly, the order dated 28.08.2018 passed by the learned Chief Judicial Magistrate, Begusarai, in Barauni P.S. Case No. 189 of 2016 as well as the order dated 24.05.2019 passed by the learned Additional Sessions Judge-IX, Begusarai, in Cr. Revision No. 348/18, and all the consequential proceedings arising out of Barauni P.S. Case No. 189 of 2016 against the petitioners are hereby quashed.

15. The concerned Court below is directed to



conclude the Sessions Trial No. 88 of 2012 at the earliest.

Shishir/-

(Sandeep Kumar, J)

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