

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22735 of 2018

Arising Out of PS. Case No.-277 Year-2016 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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1. Om Prakash Sah @ Suman Sah and Ors S/o Late Moti Sah,
 2. Sudarshan Sah S/o Manager Sah,
 3. Mahendra Sah S/o Manager Sah,
 4. Sunil Sah S/o Charanjiv Sah,
 5. Pappu Gupta,
 6. Ramu Gupta,
 7. Rajesh Gupta
 8. Sanjay Gupta All 5 to 8 are Sons of Kashi Sah,
 9. Triloki Sah,
 10. Banarasi Sah Both 9 and 10 are Sons of Mathura Sah,
 11. Santosh Kumar Gupta, S/o Late Banarasi Sah,
 12. Chunmun Sah,
 13. Chiranjavi Sah Both 12 and 13 are Sons of Late Jamuna Sah,
 14. Jamuna Prasad @ Yamuna Sah S/o Late Ram Narayan Sah,
 15. Tuntun Sah S/o Late Raghunath Sah,
 16. Ayodhya Sah S/o Late Kesho Sah, All 1 to 16 are R/o Vill.- Kochas, P.O. and
P.S.- Kochas, District- Rohtas.

... .. Petitioner/s

Versus

1. State of Bihar and Anr.
2. Hisamuddin Ansari S/o Mansur Ansari, R/o Vill.- Dak Banglow Market, P.O.
and P.S.- Kochas, District- Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bajarangi Lal, Advocate
For the Opposite Party/s : Dr. Mrityunjaya Kumar Gautam, APP

CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL ORDER

7 14-07-2026 Heard the parties.

2. This application has been filed for setting aside the
order dated 06.09.2016, passed by the A.C.J.M.-1, Sasaram, in



Complaint Case No. 277 of 2016, whereunder and whereby cognizance has been taken for the offences under Sections 147, 148 and 380 I.P.C. against the petitioners and others and summons have been issued against them.

3. The case of the prosecution, in brief, is that the complainant and his family members have several cloth shops for long and the accused person too have a cloth shop in the same market. On the alleged date and time of occurrence, some customers came at the shop of the informant and asked about the price of a bed-sheet, which was said to be of Rs.225/- and said they are vendors and they intend to purchase clothes in bulk and told that they used to make bulk purchase from the shop of the accused persons. Thereafter, the said customers went to the shop of the accused persons complaining about the higher rates and asked to return the clothes purchased earlier and returned it citing the cheaper price being offered by the complainant and said that they will no more be making any purchase from accused persons and thereafter purchased clothes worth Rs.35,000/- from the shop of the complainant. It has been further alleged that thereafter peeved with the happening, all the accused persons armed variously came near the shop of the complainant shouting community/religion based slogans and, on



being remonstrated, surrounded the complainant and his family members and started assaulting them. It has been further alleged that co-accused Om Prakash Sah was armed with pistol, while co-accused Sudarshan Sah and Mahendra Sah were armed with iron rods, whereas co-accused Pappu Gupta was armed with knife and the complainant and others ran to save their life. Thereafter pelting of stones ensued between both the sides as a result of which complainant sustained injuries and when the local people gathered there, the complainant and other could be saved. It has been alleged that the intention of the accused persons was to resort to riot. It has been further alleged that when the complainant's father along with others went to the police station to lodge case against the accused persons, the police did not register the case under the influence of accused persons and the local politicians, who had assembled at the police station, rather police arrested the father of the complainant and his companions. It has further been alleged that during the occurrence, accused persons also took away bundles of different clothings and sarees and other valuable goods. It has been alleged that since the complainant belongs to minority and weaker community, the accused persons committed the occurrence with an intention to kill them and police too colluded



with the accused persons and did not register the case, therefore, the complaint petition was filed in the court.

4. Learned counsel for the petitioners has submitted that after thorough investigation, the investigating agency found the case to be false against the petitioners and the finding of the investigating agency was accepted by learned Magistrate, but since a protest petition was filed, the same was treated to be as complaint, and accordingly, after examination of witnesses under the provision of Section 202 Cr.P.C., the learned Magistrate proceeded to take cognizance against the petitioners.

5. It has further been submitted that petitioner no. 1 had earlier lodged an FIR bearing Kochas P.S. Case No. 53 of 2014, under Sections 147, 148, 149, 323, 324, 325, 307, 379 I.P.C, and police, after investigation, found the case true against the complainant and others and the learned Magistrate also took cognizance against them. It has further been submitted that after the filing of said FIR on 12.05.2014, the present case against the petitioners came to be lodged by way of complaint on 15.05.2014, which was subsequently sent to the police under the provisions of 156(3) Cr.P.C. and accordingly the present case against the petitioners, being Kochas P.S. Case No. 55 of 2014, was registered.



6. It has further been submitted that although the case was registered under Sections 307, 379 and ancillary Sections, but the learned Magistrate took cognizance against the petitioners under Sections 147, 148 and 380 of Indian Penal Code.

7. Learned counsel for the petitioners has placed reliance on the judgment of the Hon'ble Supreme Court passed in the case of *State of Haryana versus Bhajanlal*, reported in **1992 Supplementary (1) SCC Page 335**, and has submitted that the present FIR is nothing but an attempt to take revenge and to spite personal score out of business rivalry. It has further been submitted that the witnesses, who were examined under the provision of 202 Cr.P.C., were also examined during the course of investigation, upon which the petitioners were exonerated during the investigation and the learned Magistrate also having applied the judicial mind did not take cognizance against them. It has further been submitted that no *prima facie* case is made out against the petitioners in the facts and circumstances of the case.

8. It has further been submitted that a commercial dispute, which is primarily of civil in nature, has been given the colour of criminal case. It has further been submitted that no



ingredients of Section 147, 148 and 380 I.P.C. is made out in the facts and circumstances of the case. It has further been submitted that the present prosecution is nothing, but misuse of process of the Court.

9. Heard the parties perused the records.

10. Considering the facts and circumstances of the case, the order taking cognizance dated 06.09.2016 passed in Complaint Case No. 277 of 2016 by the learned ACJM-I, Sasaram, is hereby set aside and quashed.

11. The application stands allowed.

(Praveen Kumar, J)

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