

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83284 of 2019

Arising Out of PS. Case No.-41 Year-2017 Thana- TARIYANI CHOWK District- Sheohar

Kamli Devi W/O Awadhesh Ray R/O Village- Madhopur Chhata, P.S.-
Tariyani, District- Sheohar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Umakant Thakur S/o Chanardeo Thakur R/o village- Madhopur Chhata, P.S.- Tariyani, District- Sheohar
3. Jay Kant Thakur S/o Chanardeo Thakur R/o village- Madhopur Chhata, P.S.- Tariyani, District- Sheohar
4. Srikant Thakur S/o Chanardeo Thakur R/o village- Madhopur Chhata, P.S.- Tariyani, District- Sheohar
5. Chanardeo Thakur S/o Late Ram Bharosh Thakur R/o village- Madhopur Chhata, P.S.- Tariyani, District- Sheohar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Ms. Madhubala Verma, Advocate Mr. Uday Kumar, Advocate
For the Opposite Party/s	:	Mr. Pranav Kumar Mr. Shyam Kumar Singh, APP Mr. Ajay Kumar Thakur, Advocate Mr. Ritwik Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

6 20-01-2026 Heard the learned Senior Counsel for the petitioner, the learned APP appearing for the State and Mr. Ajay Kumar Thakur assisted by Mr. Ritwik Thakur, the learned counsel for the opposite parties.

2. This application has been filed for quashing the order dated 17.8.2019 passed by the learned District and Session



Judge, Sheohar in Criminal Revision no. 15/2019 by which the learned District and Sessions Judge, Sheohar set aside the order dated 25.2.19 passed by the learned Chief Judicial Magistrate Sheohar in Tariyani P.S. Case no. 41/2017 by which the learned Magistrate took cognizance against all accused persons named in column 7 of the FIR under Sections 341, 323, 302, 504, and 34 of the Indian Penal code and further fixed the date as 01.04.2019 for their appearance.

3. The brief facts of the case are that on 13.03.2017, Kamli Devi, wife of Awadhesh Ray, gave a written complaint to the Officer-in-charge of Tariyani Police Station, alleging that on 12.03.2017, at around 5:30 PM, when her husband was returning home after working in the fields, in the meantime, near the house of Ram Chandra Rai, a halla was raised that some persons were beating Ram Chandra Rai by surrounding him. On hearing the *halla*, the informant rushed to the spot and saw that Umakant Thakur was assaulting her husband with a rod, while Jay Kant Thakur, Srikant Thakur, Chanardeo Thakur, Mohan Das, Manjay Das, and Rabida were assaulting him with bamboo and lathi. It is further alleged that Umakant Thakur assaulted her husband on the head with a rod, causing him to lose consciousness and due to which he fell on the ground. It is



further alleged that on hearing the *halla*, several villagers came at the spot and after seeing the villagers, the accused persons fled away. The villagers took her husband to Sadar Hospital, Sheohar, where, after receiving primary treatment, he was referred to Muzaffarpur Hospital and later to Patna.

4. The learned counsel for the petitioner submits that the petitioner, who is the informant of the case, claims herself to be an eyewitness of the occurrence. On the written information of the petitioner, a case was lodged as Tariyani P.S. Case no. 41/17 under Sections 341, 323, 307, 504, 34 of the Indian Penal Code on 13.03.2017 and On 17.03.2017, Section 302 IPC was added as her husband succumbed to his injuries during treatment. He further submits that the police investigated the case and recorded the statement of several witnesses who have supported the occurrence. Notably, in paragraph 46 of the case diary, the *fardbeyan* of Dinesh Ray, recorded in the emergency ward of Patna Medical College and Hospital, claims to be an eyewitness and fully supports the prosecution's case. Additionally, in paragraph 47 of the case diary, the inquest report was found to be consistent with the allegations made in the FIR, showing injuries caused by a hard blunt object.

5. The learned counsel for the petitioner has further



submitted that since the beginning, the informant had doubts regarding the investigation, and on 30.05.2017, she filed a protest petition before the concerned court. In the FIR, the informant had specifically alleged that accused Umakant Thakur assaulted her husband with a rod in her presence, and the other accused Jaykant Thakur, Srikant Thakur, Chanardeo Thakur, and others were alleged to have assaulted her husband with lathi and danda. Dinesh Ray, in his *fardbeyan*, also specifically implicated opposite parties No. 2 to 5. Despite this, the investigating officer submitted the final form against the accused persons No. 2 to 5 on 16.06.2017 and 30.04.2018, vide Final Reports No. 110/17 and 72/18, respectively, and submitted a charge sheet only against Mohan Das, Manjay Das, and Rabida.

6. The learned counsel for the petitioner has further submitted that after submission of Charge sheet only against three persons and the final form against opposite parties no. 2 to 5, the learned Chief Judicial Magistrate, Sheohar *vide* order dated 25.2.19 took cognizance against all the accused persons whose names were mentioned in Column 7 of the FIR after finding sufficient material against all accused persons in the diary.



7. The learned counsel for the petitioner has further submitted that opposite parties no. 2 to 5 have challenged the order dated 25.2.19 passed by the learned Chief Judicial Magistrate, Sheohar in Cr. Rev. no. 15/19 which was heard and allowed 17.8.19 by the learned District and Session Judge, Sheohar setting aside the order dated 25.2.19 passed by the learned Chief Judicial Magistrate Sheohar. He further submits that the learned District and Session Judge Sheohar has not gone through the records of the case and without going through the entire Materials collected by the investigating officer set aside the order passed by the learned C.J.M, Sheohar on 25.2.19.

8. The learned counsel for the petitioner has further submitted that the learned District and Sessions Judge, Sheohar has only considered the final form submitted by the investigating officer but has not considered the prosecution version of the informant, her re-statement and *fardbeyan* of one Dinesh Ray mentioned in Para 46 of the case diary and allowed the Revision application by setting aside the order dated 25.2.19 by learned Chief Judicial Magistrate.

9. The learned counsel for the State has opposed the application of the petitioner and has supported the impugned order.



10. I have heard and considered the submission of the parties and have gone through the records of the case.

11. This Court is of the view that the learned District and Sessions Judge, Sheohar, while setting aside the order passed by the learned Chief Judicial Magistrate, Sheohar, has not considered all the facts and the materials of the case. The learned District and Sessions Judge, Sheohar, should have considered all aspects of the case, including the statements of the informant and key witnesses, as well as the inquest report and other corroborative evidence. The learned District and Sessions Judge, Sheohar has only considered the final form submitted by the I.O. but has not considered the prosecution version of the informant, her restatement and fardbeyan of one Dinesh Ray.

12. The learned Chief Judicial Magistrate had rightly taken cognizance of the offences against all the accused persons named in the FIR after considering the entire evidence and material gathered during the investigation.

13. In view of the discussions made above, the application stands allowed. Accordingly, the order dated 17.8.2019 passed by the learned District and Session Judge, Sheohar in Criminal Revision No. 15/2019, setting aside the



order dated 25.2.19 passed by the learned Chief Judicial Magistrate Sheohar in Tariyani P.S. Case no. 41/2017 is hereby quashed.

(Sandeep Kumar, J)

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