

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53050 of 2016**

Arising Out of PS. Case No.-145 Year-2013 Thana- NALANDA COMPLAINT CASE District-
Nalanda

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1. Kameshwar Ravidas @ Kameshar Ravidas, Son Of Dhannu Ravidas,
2. Pappu Ravidas, Son of Kameshwar Ravidas
3. Ram Pravesh Ravidas, Son of Sokhi Ravidas, All are resident of Village Ben,
Police Station- Ben in the district of Nalanda.

... .. Petitioner/s

Versus

1. State of Bihar
2. Chhedi Ravidas, Son of Late Ram Briksh Ravidas, resident of
Village Mahangupur, Police Station- Noorsarai in the district of Nalanda.

... .. Opposite Party/s

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Code of Criminal Procedure, 1973—Section 482—Quashing of cognizance order—
son of informant died of an accident when he was riding a tractor—two FIRs were
lodged for the same incident, one by Brother-in-law of Opposite party, and second
by opposite party himself—police not found any substance in the allegations
levelled by the opposite party—opposite party not disclosed any attempt on his part
to lodge the FIR before the police prior to filing his complaint which also goes
against him and raises a great possibility of filing of the petition by opposite party
afterthought with mala fide intention—police did not find any relevant material to
show even prima facie the commission of the alleged murder of the deceased by the
petitioners—order impugned taking cognizance of alleged offences has been passed
mechanically without applying judicial mind, hence, it is bad in law—order
impugned set aside—petition allowed.

(Paras 5, 6)

2006 (3) PLJR 98—**Referred to.**

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar, Advocate
For the State	:	Mr. Binod Kumar No.3, APP
For the Informant	:	Mr. Ravi Prakash, Advocate
		Mr. Purushottam Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

9 11-02-2025 Heard Mr. Sunil Kumar, learned counsel appearing for the petitioners, Mr. Ravi Prakash, learned counsel for the O.P. No.2 and Mr. Binod Kumar No.3, learned APP for the State.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) against the order dated 21.06.2014 passed by the learned Judicial Magistrate, 1st Class, Nalanda at Biharsharif, in connection with Protest-cum-Complaint Case No. 145(c) of 2013, arising out of Ben P.S. Case No. 79 of 2012 by which the



cognizance of the offences punishable under Sections 302 and 120B of the Indian Penal Code (in short 'IPC') has been taken against the petitioners.

3. Mr. Sunil Kumar, learned counsel appearing for the petitioners submits that instant matter is an example of malicious prosecution which relates to unnatural death of son of the complainant/informant, in fact, the informant's son died of an accident when he was riding a tractor and regarding that accident, Ben P.S. Case No. 43 of 2012 was lodged under Sections 279, 304 A and 201 of IPC on the basis of *fardbeyan* of one, Ram Pravesh Ravidas, brother-in-law of the complainant (O.P. No.2) in which a proper investigation was made and the statement of the deceased's father was also recorded on 20.05.2012 in which the deceased's father revealed the factum of accidental death of his son, though, also raised his suspicion about the killing of his son by the accused persons without any basis but however, from this fact it is clearly evident that the O.P. No.2 had got the information of the commission of the alleged occurrence at the initial stage but he remained silent for several days and later filed a typed petition on 25.06.2012 about fifty days after the death of his son and in that petition, he did not disclose any step having been taken by him to lodge an FIR



prior to the filing of the petition and the said conduct of the O.P. No.2 in itself shows the malafide intention on his part to harass the petitioners as well as taking money from the petitioners by creating pressure upon them. It is further submitted that in Ben P.S. Case No. 43 of 2012 the police submitted chargesheet under Sections 279, 304A and 201 of IPC against one, Manoj Ravidas, who was driving the alleged tractor from which the deceased fell down and consequently died and there are sufficient materials in the case diary of the Ben P.S. Case No. 43 of 2012 to show the death of the deceased having taken place on account of motor accident and further, the inquest report and postmortem report also did not suggest the commission of the alleged murder and the external and internal injuries found on the body of the deceased are quite possible by a motor accident. It is further submitted that the O.P. No.2 simply raised his suspicion in his protest petition and regarding the motive of the petitioners to commit the alleged crime he simply disclosed that a sum of Rs. 15,000/ and 20,000/- had been given to the petitioners Ram Pravesh Ravidas and Kameshwar Ravidas for the purpose of meeting marriage expenses as well as for purchasing a tractor but regarding these facts, the statement made in the paragraph no. 8 of the complaint is completely vague and no evidence was



given in this regard before the inquiry court and further, the police did not find substance in the allegations levelled by the O.P. No.2 in Ben P.S. Case No. 79 of 2012 andi consequently, police submitted the final form in favour of the petitioners showing the institution of the FIR due to mistake of fact.

4. On the contrary, Mr. Ravi Prakash, learned counsel appearing for the O.P. No.2 has vehemently opposed this petition and he submits that the instant matter relates to an unnatural death of the son of the O.P. No.2 and the learned Magistrate has taken cognizance of the serious offences punishable under Sections 302 and 120B of IPC and the complainant (O.P. No.2) disclosed the reason of delay in filing the complaint and further, before the inquiry court, the complainant as well as inquiry witnesses fully supported the allegations and motive to commit the alleged offences on the part of the petitioners was also disclosed. He further submits that at the stage of taking cognizance only it is to be looked into by the concerned Magistrate whether *prima facie* case of an offence is made out or not and an allegation with regard to the commission of the serious offence cannot be brushed aside mainly on this ground that there is no eyewitness or the basis of allegation is mere suspicion. In support of this submission, the



learned counsel has placed reliance upon the judgment of this Court passed in the case of **Abdul Aziz vs. State of Bihar** reported in **2006 (3) PLJR 98** and the relevant paragraph no. 7 upon which reliance has been placed is being reproduced as under :-

“ 7. It is also well settled that at this stage the Magistrate is required only to see whether there is a *prima facie* case against the accused to proceed against him. It is not to be seen at this stage whether the materials are sufficient for conviction of the accused. Therefore, though there is no eye-witness to the occurrence as there are some circumstances against the petitioner for his involvement, it would not be proper for this Court to interfere with the impugned order.”

5. Heard both the sides and perused the order impugned and the case diaries of the Ben P.S. Case No. 43 of 2012 and Ben P.S. Case No. 79 of 2012 and also other relevant materials such as Protest Petition filed by the O.P. No.2 and statements of the witnesses examined by the complainant (O.P. No.2) on the protest petition. Though at the stage of taking



cognizance of an offence, the materials such as the statements of the witnesses available in the case diary or made before the inquiry court are looked into only, to find out *prima facie* the commission of an offence by the concerned Magistrate or court. But however, this Court cannot shut its eyes when there are strong circumstances suggesting the malicious prosecution by the informant or complainant and in such a situation, this Court is bound to protect one from malicious prosecution. In the instant matter, the son of O.P. No.2 died on 05.05.2012 and the factum of death of the deceased had come into the knowledge of O.P. No.2 immediately after the death but even then he remained silent for several days and did not take any step to lodge the FIR regarding the commission of the alleged murder despite recording his statement in Ben P.S. Case No. 43 of 2012 which was lodged by the brother-in-law of the O.P. No.2 for the offences under Sections 279, 304A and 201 of IPC and the said long silence on the part of O.P. No.2 in taking a legal recourse to investigate the commission of the alleged murder makes the conduct of O.P. No.2 highly suspicious. The O.P. No.2 filed his complaint which was sent to police for investigation on 25.06.2012, whereas the alleged occurrence of death of the deceased took place on 05.05.2012 and further, the allegations



levelled by the O.P. No.2 in his Complaint-cum- Protest Petition were completely based on suspicion and neither the complainant nor his inquiry witnesses claimed to have seen the commission of the alleged murder. So far as the motive on the part of the petitioners to commit the murder of the son of O.P. No.2 is concerned, it was revealed by the O.P. No.2 in his complaint that a sum of Rs. 15,000/- and Rs. 20,000/- had been given to the petitioners, Ram Pravesh Ravidas and Kameshwar Ravidas, to meet the marriage expenses and for purchasing a tractor but regarding these transactions the statement made by the O.P. No.2 in his complaint is completely vague and further, in this regard, no evidence was given by him before the inquiry court. Here it is important to mention that the police did not find substance in the allegations levelled by the O.P. No.2 in Ben P.S. Case No. 79 of 2012. The O.P. No.2 did not disclose any attempt on his part to lodge the FIR before the police prior to filing his complaint which also goes against him and raises a great possibility of filing of the petition by O.P. No.2 afterthought with malafide intention. The death of the deceased has been investigated by the police in two cases initially in Ben P.S. Case No. 43 of 2012 lodged by the brother-in-law of the complainant (O.P. No.2) and in Ben P.S. Case No. 79 of 2012



lodged by the O.P. No.2 and police did not find any relevant material to show even *prima facie* the commission of the alleged murder of the deceased by the petitioners.

6. The aforesaid circumstances persuade this Court to form the opinion that the O.P. No.2 filed his case initially by way of complaint and thereafter, by way of Protest Petition upon the submission of final form by the police with a malafide intention only to harass the petitioners or extort money from them by taking an advantage of the situation of accidental death of his son, so, the interest of justice demands to protect the petitioners from malicious prosecution and the order impugned taking cognizance of the alleged offences has been passed mechanically without applying judicial mind, hence, it is bad in law and if the prosecution is allowed to run against the petitioners it will be complete abuse of the process of law, so, the order impugned is hereby set aside and the instant petition stands allowed.

(Shailendra Singh, J)

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