

IN THE HIGH Court OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.530 of 2023

Arising Out of PS. Case No.-157 Year-2022 Thana- KHAGARIA District- Khagaria

1. Raj Kumar, S/O B.N. Vaish, Resident of Quarter No.-C-2, Judicial Officers Colony, Sansarpur, Khagaria, P.S.- Khagaria (Muffasil), District- Khagaria.
2. Kusum Devi, W/O Raj Kumar, Resident Of Quarter No.-C-2, Judicial Officers Colony, Sansarpur, Khagaria, P.S.- Khagaria (Muffasil), District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar Through District Magistrate, Khagaria. Bihar
2. The Superintendent of Police, Khagaria. Bihar
3. The Station House Officer, Khagaria (Muffsail), Police Station, Khagaria. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : Mr. Prabhat Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 01-05-2024

1. This Court proceeds to deliver the judgment based on a very unfortunate allegation against a senior member of Bihar Superior Judicial Service. The Petitioner is a Member of Bihar Superior Judicial Service and was posted as Principal



Judge, Family Court, Khagaria at the relevant point of time. On 1st of February, 2022, the Petitioner left his official quarter early morning for walking at about 05:15 A.M. When he returned to his official residence at about 06:15 A.M., he found that the main gate of his official residence was open. One, Virendra Prasad Singh, Homeguard, since deceased, was on duty at the relevant point of time as Homeguard in the official residence of the Petitioner. Seeing the entrance gate open at the early hour of morning, he asked the above-named Homeguard as to why the gate remained open. At this, the said Homeguard became agitated and abused him saying that it was not his duty to close the entrance gate of the official residence of the Petitioner. There was some exchange of words between the Homeguard and the Petitioner. The aforesaid Homeguard abused him saying that he was not a servant of the father of the Petitioner. In course of altercation, the said Homeguard pointed his service riffle on the chest of the Petitioner and threatened him to open fire to kill him. Immediately, the Petitioner snatched the riffle away from the possession of the Homeguard. Thereafter, he informed the matter to the Superintendent of Police, Khagaria over telephone.

2. It appears from the Muffasil Police Station G.D. Entry No. 3, dated 1st of February, 2022 that on 07:05 A.M., the



on duty Police Officer got information over telephone from one Amar Verma, Bench Clerk of the Court of Chief Judicial Magistrate, Khagaria that some problem cropped up involving a Homeguard deputed at the residence of the Principal Judge, Family Court, Khagaria, with the Petitioner. The Sub-Inspector, Gunjan Kumar recorded the said information in the General Diary Book and left the Police Station for the residence of the Principal Judge, Family Court, Khagaria at 07:05 A.M. He reached the residence of the Petitioner, appraise of the fact, took charge of the said Homeguard, namely, Virendra Prasad Singh along with the service riffle and 13 rounds of live cartridges from his possession. He also received a written complaint submitted by the Petitioner at his residence and returned to the Police Station at 08:05 A.M. In the G.D Entry No. 7, dated 1st of February, 2022 at 08:05 A.M., it is recorded by S.I., Gunjan Kumar that he returned to the Police Station from the residence of the Petitioner situated at the Judge's Colony, Sansarpur along with Homeguard, Virendra Prasad Singh and the written application submitted by the Petitioner to him. He also recorded in the G.D. Entry that when he reached the official residence of the Petitioner, he found O.S.D., S.I, Mahendra Singh and a Constable of Police Line present there, to whom the Petitioner



was telling the incident involving the said Homeguard. The aforesaid Homeguard was standing at the spot. The Petitioner informed S.I., Gunjan Kumar that the said Homeguard misbehaved with him, threatened to shoot him by placing his riffle on his chest. The said Homeguard handed over his service riffle and cartridges. S.I., Mahendra Singh and the Constable of Police counted the bullets and received the riffle and cartridges to deposit them in the Police line. When S.I, Gunjan Kumar asked the Homeguard about the incident, he could not say anything. He was shivering. The Police Officer noticed abrasions over his nose and upper lips. He had repeatedly asked him to tell his name but it appeared to the Police Officer that he was not in a position to speak. Then, S.I, Gunjan Kumar brought him to the Police Station by his official vehicle. It appears from the documents filed on behalf of the Petitioner that on the basis of the written complaint submitted by the Petitioner, Police registered Khagaria Muffasil P.S. Case No. 85 of 2022, dated 1st of February, 2022, under Sections 341, 504 and 506 of the Indian Penal Code on 1st of February, 2022 at about 09:35 A.M.

3. It is also found from the copy of the Police Station General Diary Book that on 08:15 A.M of the same day, S.I., Gunjan Singh was informed that Virendra Prasad Singh,



Homeguard was vomiting and some red substance was mixed in his vomitous. The above-named Police Officer went to the place where the Homeguard was kept and looking at vomitous, he immediately took the Homeguard to Sadar Hospital, Khagaria in Police vehicle for medical treatment along with Satyendra Paswan and Raghuvir Kumar, both Homeguards. At about 09:00 A.M., S.I., Gunjan Kumar requested the on duty Police Officer in the Police Station to send two Homeguards to Sadar Hospital, Khagaria with a command order. The said information was recorded in the G.D Entry Book and at 09.00 A.M. *vide* Entry No. 10. G.D Entry No. 14, dated 1st of February, 2022 at 10:30 A.M. reveals that S.I., Gunjan Kumar came back to Police Station from Sadar Hospital, Khagaria and the said Homeguard was given primary treatment in the Sadar Hospital, Khagaria and referred to some better hospital for better treatment of the said Homeguard. Accordingly, the said Virendra Prasad Singh was taken to private nursing home, namely, Ishwar Hospital at Begusarai and he was admitted there. The family members of the Homeguard were informed about hospitalisation of the said Homeguard. From Ishwar Hospital, Begusarai, he was transferred to Patna Medical College and Hospital, where he died on 14th of February, 2022.



4. Other side of the story is as follows:-

On 2nd of February, 2022, one Gautum Kumar, Son of Virendra Prasad Singh, since deceased, lodged a written complaint to the Officer-In-Charge, Muffasil P.S., Khagaria, stating, *inter alia*, that his father was posted as Homeguard in the official residence of the Principal Judge, Family Court at Khagaria. On 1st of February, 2022 at about 07:00 A.M., he received a phone call and came to know that the Principal Judge, Family Court, Khagaria and his wife badly assaulted his father and as a result of the assault, he was seriously injured. After receiving the information, he rushed to Khagaria Hospital and saw his father. The Medical Officer told him that he should be taken to a better hospital for better treatment. The informant also found marks of assault on the head of his father and he was unconscious. He was vomiting blood as a result of receiving injury on his head. The informant immediately took his father by an ambulance to Begusarai and he was admitted to Ishwar Hospital, Begusarai. It is also alleged by the informant that the Principal Judge and his wife compelled his father to do sweeping, cleaning and other households work in the official residence. The father of the informant denied to perform such household works on the date of occurrence, as a result of which



the Principal Judge and his wife became angry and assaulted him. He was pushed back by them. As a result, he fell down on the ground and received severe injury on his head and other parts of body. It is also stated by him in the written complaint that he came to know about the incident from another Homeguard, namely, Satyendra Paswan, who was one of the Homeguards deputed on the official residence of the Principal Judge, Family, Court, Khagaria and he told him that the incident took place in his presence. Though Police received the said complaint on 2nd of February, 2022, but did not register any case against the Petitioner and his wife. The written complaint was left unattended till 23rd of February, 2022.

5. The case diary of Khagaria Muffasil P.S Case No. 157 of 2022, dated 23rd of February, 2022, instituted for the offences punishable under Sections 341, 342, 323, 337, 338, 307 and 34 of the Indian Penal Code was called for during hearing of the instant writ petition. It appears from paragraph 8 of the case diary that on the basis of the written complaint submitted by Gautum Kumar, son of late Virendra Prasad Singh, the Superintendent of Police, Khagaria wrote a letter, dated 4th of February, 2022 to the District and Sessions Judge, Khagaria, requesting him to inform the Police Authority about the



guidelines to register a criminal case against a Judicial Officer. The District and Sessions Judge, Khagaria vide his letter bearing no. 421/2022, dated 14th of February, 2022, informed the Superintendent of Police of Khagaria that in view of the decision of the Hon'ble Supreme Court in the case of ***Delhi Judicial Service Association, TIS Hazari Court, Delhi v. State of Gujarat & Ors.***, reported in ***(1991) 4 SCC 406***, permission of the Hon'ble High Court is required to register a Police case against a judicial officer. Thereafter, the High Court of Judicature at Patna was approached for obtaining requisite permission and the permission was granted by the Registrar General, In-Charge, High Court of Judicature at Patna on 21st of February, 2022. Only after receiving the said permission, Khagaria Police Station Case No. 157 of 2022 was registered on 23rd of February, 2022 under Sections 341, 342, 333, 337, 338, 307 and 34 of the IPC with adding Section 302 of the IPC against the Petitioner.

6. Under the aforesaid factual background, the Petitioner has filed the instant writ petition for the following reliefs:-

(i) *For quashing of First Information Report of Khagaria (Muffasil) P.S. Case No. 157 of 2022,*



dated 23.02.2022 (Anx-1), registered under Sections 341, 342, 323, 337, 338 and 307/34 of the Indian Penal Code, and later on Section 302 of the Indian Penal Code was added by the Police on 15.07.2022.

(ii) For ad-interim stay of the proceedings of Khagaria (Muffasil) P.S. Case No. 157 of 2022 dated 23.02.2022, (G.R. No. 483/22), under Sections 341, 342, 323, 337, 338, 302, 307, 34 I.P.C. pending in the Court of C.J.M., Khagaria.

(iii) For any other consequential relief or reliefs for which the Petitioner is found entitled during the course of hearing of the writ petition.

7. It is submitted by Smt. Archana Shahi, learned Advocate for the Petitioners that Khagaria P.S. Case No. 157 of 2022 is a glaring example of false and malicious implication of an innocent Judicial Officer in order to suppress a case of custodial violence perpetrated by Police in the Police Station upon the Homeguard.

8. The learned Advocate appearing on behalf of the Petitioners refers to the relevant G.D. entries already recorded hereinbefore and submits that when S.I., Gunjan Kumar went to the official residence of the Principal Judge, Family Court,



Khagaria, he found the victim Homeguard standing in one corner of a room. He found small abrasions over the nose and upper lip of the Homeguard. He did not find any other injuries. It also appears from the relevant G.D Entry that the above-named Police Officer took custody of the Homeguard. He was shivering at that point of time and did not say his name and address. However, he was taken to Police vehicle from the residence of Principal Judge and brought to the Police Station. In the relevant G.D Entry, it was not recorded by the Police Officer that the Homeguard or any other person informed him that he was assaulted by the Petitioner and his wife. According to the G.D. Entry No. 3, dated 1st of February, 2022, S.I., Gunjan Kumar received information about the written complaint of the Petitioner against Homeguard at 07:15 A.M. in the official residence of the Petitioner. Therefore, it took about 10 minutes to reach the official residence of the Petitioner from the Police Station. The aforesaid Homeguard was under the custody of Police from 07:15 A.M. to 08:05 A.M. At about 08:15 A.M., one Chaukidar, namely, Bindeshwar Tati informed him that the Homeguard was vomiting. Then, he was taken to Khagaria Hospital for medical treatment. Thus, from 07:15 A.M. to 08:15 A.M, on 1st of February, 2022, the victim remained in the



custody of the Police.

9. It is contended by Smt. Archana Shahi, learned Advocate for the Petitioners that the victim might have been assaulted by Police when he was under their custody.

10. The learned Advocate for the Petitioners next submits that Satyendra Paswan and another Homeguard, who was also posted as one of the Homeguards in the official residence of the Principal Judge accompanied the victim and the Police Officer in the same vehicle from the official residence of the Petitioner to the Police Station. He also did not make any statement that the victim was assaulted by the Petitioner and his wife severely or that he was pushed back, as a result of which he fell down and sustained injury on his head or that the Principal Judge assaulted the victim with the help of the butt of the riffle and his wife assaulted him with a piece of brick. According to the learned Advocate for the Petitioners, all these stories were subsequently created by the Investigating Officer for the purpose of the criminal case.

11. Learned Advocate for the Petitioners next submits that victim Virendra Prasad Singh was examined by Dr. Shubham Kumar Sinha, Medical Officer attached to Khagaria Sadar Hospital and on examination, he found slight abrasion on



the base of the nose and slight abrasion on left middle finger. He also found the patient unconscious at the time of his medical examination so the patient was referred to some higher medical centre. Thus, it is contended by the learned Advocate for the Petitioners that the Medical Officer who examined the patient at the earliest point of time did not find any injury on his head. Therefore, the allegation that the victim received serious injury on his head cannot stand.

12. Next she takes me to the post-mortem report of the deceased conducted on 14th of February, 2022 at 01:30 P.M. The Autopsy Surgeon reported that he did not find any injury over the body, external or internal. He opined that the cause of death was Cerebral Anoxia resulting from Intracranial Hemorrhage. Thus, the Autopsy Surgeon also did not find any injury, external or internal, during post-mortem examination of the deceased.

13. It is submitted by the Learned Advocate for the Petitioners that if a person is assaulted on the backside of the head with the help of wooden butt of service rifle or a piece of brick or he falls down on a hard surface on being pushed by some person, there must be some marks of injury on the external part of the head. At least, there will be swelling and hematoma



on the head of the victim but the doctor did not find any such injury on initial examination at Sadar Hospital, Khagaria. In the CT- scan, fracture was found in the occipital region of the scalp of the victim but Police obtained expert report on the basis of the CT-scan after a lapse of about three months of the occurrence. Therefore, such subsequent report cannot be taken into consideration, even *prima facie*, to hold that the Petitioner was responsible for causing such injury of the victim, as a result of which he died at PMCH, Patna on 14th of February, 2022.

14. The learned Advocate on behalf of the State, on the other hand, submits that after the above-named Homeguard was taken to the Police Station, he started vomiting and vomitous mixed with blood came out of his stomach. He was immediately taken to the hospital and when the Medical Officer at Khagaria Police Station examined him he was found unconscious. The Medical Officer referred him to some super specialty hospital. The victim was then admitted to Ishwar Hospital, Begusarai and from there, he was transferred to PMCH, Patna, where he died on 14th February, 2022.

15. Indisputably, the incident took place on 1st of February, 2022, the son of the victim, namely, Gautam Kumar, lodged a written complaint to the Police on 2nd February, 2022.



16. The learned Advocate on behalf of the State submits that much criticism was made on the ground as to why Police immediately did not register any case against the Petitioner and commenced investigation on the basis of the complaint lodged by the son of the victim but the facts remains that the Petitioner was at the relevant point of time a Principle Judge, Family Court at Khagaria. Therefore, the Superintendent of Police wrote a letter on 4th of February, 2022 to the Learned District & Sessions Judge, Khagaria seeking permission to register a case against the Petitioner. The Learned District and Sessions Judge informed the Superintendent of Police, Khagaria by a letter, dated 14th of February, 2022 that Police is at liberty to register a case against the Petitioner following the guidelines of the Hon'ble Supreme Court enumerated in Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ors. Subsequently, the Police Administration took an opinion of this Court on the issue of registration of a case against the Petitioner on the basis of the complaint filed by the son of the victim, on 21st February, 2022. The then Registrar General, Patna High Court, Patna informed the Superintendent of Police, Khagaria that the High Court at Patna was pleased to permit him to proceed with the matter in terms of the guidelines



laid down by the Hon'ble Supreme Court in the case of Delhi Judicial Service Association (supra). Only then, Police registered Khagaria PS Case No. 157 of 2022, dated 23rd of February, 2022 against the Petitioner and his wife for the offences punishable under Sections 341 / 342 / 323 / 337 / 338 / 307 / 34 of the IPC with added Section 302 of the IPC.

17. Thus, it is contended by the Learned Advocate for the State that there was no intentional latches on the part of the Police administration in registering a Police case against the Petitioner immediately on receipt of the complaint from the son of the victim. Delay was caused due to the reason that the Learned District and Sessions Judge and the High Court at Patna permitted Police Administration to register a case against the Petitioner after a lapse of about 20 days. Therefore, there was delay in registering the F.I.R. against the Petitioner.

18. The Learned Advocate on behalf of the State next submits that over the said incident, the Homeguard Association lodged a complaint against the Principal Judge, Family Court at Khagaria to the District Magistrate. The District Magistrate sent the said complaint for enquiry to the Public Grievance Redressal Forum, Khagaria on 2nd February, 2022. The Enquiry Committee was formed by the Additional



Superintendent of Police, Khagaria, the District Commandant, Homeguard, Khagaria and the Additional District Collector, Public Grievance Redressal Forum, Khagaria. The Enquiry Committee interrogated the Principal Judge, Family Court Khagaria. The Committee gave the same count of incident which was reported by the son of the victim in his complaint to the Police Station on 1st February 2022. It was also stated by the Committee that at the relevant point of time there were four Homeguards posted in the official residence of the said officer. Amongst them, he noticed one Satyendra Paswan and Heeralal Verma performed their duty satisfactorily but one Lal Chandra Yadav and Virendra Prasad Singh (victim) were persons of rude behaviour and they were not in the habit of obeying commands of the concerned officer. The concerned officer made his grievance against them to the Superintendent of Police, Khagaria on 29th January, 2022. The Public Grievance Redressal Forum also examined three Homeguards posted at the official residence of the concerned Judge and the said Homeguards, namely, Lal Chandra Yadav and Satyendra Paswan made submission before Public Grievance Redressal Forum that the Principal Judge and his wife assaulted Virendra Prasad Singh on 1st February, 2022.



19. Thus, the Learned Advocate for the State submits that all the Homeguards posted in the official residence of the Petitioner stated that the Petitioner and his wife admitted the victim on 1st February, 2022 at about 06:15 A.M. The Petitioner himself informed the incident to the Superintendent of Police. One staff of Khagaria District Court informed the on-duty Police Officer at Khagaria Police Station about the incident. The said information was recorded by Sub-inspector, Gunjan Kumar in the General Diary Book of the Police Station and he came to the residential house of the Petitioner within five minutes. He took charge of the said Homeguards and his fire arm and ammunition and brought him to the Police Station. Within 10 minutes, the said Homeguard started to vomit and he was sent to Sadar Hospital, Khagaria for medical treatment. Ultimately, he died at P.M.C.H., Patna. On the basis of the materials available on record, the IO submitted charge-sheet against the Petitioner under Sections 341 / 342 / 323 / 337 / 338 / 304 / 34 of the Indian Penal Code in the Court of Learned Chief Judicial Magistrate, Khagaria. The Learned Magistrate also took cognizance of the offences. At this stage the F.I.R., order of charge-sheet and the order of taking cognizance cannot be set aside.



20. Having heard the Learned Counsels for the Petitioner and the State and on careful consideration of the submissions made by Learned Counsels and the documents and case diary relied upon by them, this Court finds that the Petitioner has prayed for quashing of the F.I.R. and charge-sheet filed against him on the following grounds:

(i) The alleged incident took place on the 1st February, 2022 at about 06: 15 A.M. Immediately after the incident, the Petitioner informed the Superintendent of Police and the District and Sessions Judge, Khagaria that the Homeguard (victim) abused him when he asked him as to why the entrance of the official residence of the Petitioner remained unattended and was not closed. The victim abused him saying that it was his duty to guard the house from the guard room and he was not responsible for closing entrance gate. There was some altercation and the victim threatens him to kill by gunshot, touching his service rifle on the chest of the Petitioner. In order to save himself, he snatched away the rifle from the hands of the Homeguard.

(ii) Other side of the evidence collected by the Police during investigation is that on hearing of sound of altercation between the Petitioner and the victim, other



Homeguards, who were posted on duty in the official residence of the Petitioner rushed to the place of occurrence and found that the Petitioner and his wife were assaulting the victim. The victim was lying on the ground. The Petitioner was assaulting him with the help of the butt of the rifle and his wife was assaulted him with a piece of brick.

21. The Investigating Officer examined the Homeguards and recorded their statements under Section 161 of the Cr.P.C. He also obtained the inquiry report of Public Grievance Redressal Forum, Khagaria. The Investigating Officer also collected the post-mortem report, initial injury report and subsequent opinion of the Medical Officer on the basis of the CT scan report of the victim and submitted charge-sheet for the offences punishable under sections 341 / 342 / 323 / 337 / 338 / 304 / 34 of the Indian Penal Code.

22. At this stage, this Court is called upon to determine whether materials on record disclose a *prima facie* case, leading to a triable offence or not?

23. The law with regard to exercise of jurisdiction under Section 482 CrPC to quash complaints and criminal proceedings have been successfully summarized by the Hon'ble Supreme Court in the case of *Indian Oil Corporation and*



NEPC India Limited, reported in (2006) 6 SCC 736 after considering the earlier precedents. It will be apposite to refer to the following observations of the Hon'ble Supreme Court in the said case as hereunder:-

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri)



615] , *Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786]* , *M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19]* and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]* . The principles, relevant to our purpose are:

(i) *A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint

(ii) *A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking*



vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding,



the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

24. The learned Advocate for the Petitioners, at the outset, has criticized the prosecution case on the ground of delay in registering FIR, bearing Khagaria Muffasil P.S. Case No. 157 of 2022 against the Petitioners. It was vehemently urged by the learned counsel for the Petitioners that when the son of the deceased submitted a written complaint on 2nd February 2022, why is there an unexplained delay of about 20 days in registering the case against the Petitioners? The unexplained delay speaks a volume regarding concoction and falsity of criminal case.

25. It is, however, found from the case diary that delay in registering the case was caused due to the reason that the Police authority wanted permission for registration of case from the District and Sessions Judge, Khagaria and then from the High Court of Patna. The High Court communicated its decision, permitting the Police Authority to register a case



following the guidelines enumerated in the case of Delhi Judicial Service Association (supra) on the 21st February 2022. The said communication was received by the Superintendent of Police, Khagaria on the 23rd February, 2022 and immediately thereafter the case was registered. Therefore, there was no intentional latches on the part of the Police Authority to delay in registering the case against the Petitioner.

26. In a very recent decision in the case of *Hariprasad v. State of Chhattisgarh*, reported in (2024) 2 SCC 557, the Hon'ble Supreme Court condoned the delay of one year in filing FIR and registering a case against the accused under Section 302 of the Indian Penal Code. In the said report, the victim was found lying on the Varandha of his house in the early morning by his wife and daughter. His wife and daughter asked him as to why he was lying on the Varandha. The victim replied that the accused gave something to drink to him and after consuming the said drink he became ill. He was admitted to the hospital and subsequently expired. In the postmortem report, the Autopsy Surgeon failed to give any conclusive opinion as to the cause of his death. However, viscera of the deceased was sent for forensic examination. The chemical examination report suggested presence of poison in the stomach and kidney of the



victim. The chemical examination report was received after one year of the incident. Thereafter, FIR was accepted against the accused and the Hon'ble Supreme Court condoned the delay in lodging the F.I.R.

27. In the instant case also, the District Administration of Police was at affix regarding as to whether a criminal case can be registered against a member of Bihar Superior Judicial Service. The District Police Administration sought for the opinion of the District and Sessions Judge and the High Court. The High Court through the Registrar General permitted the Police Authority to register a case on the basis of the complaint submitted by Gautam Kumar by a letter, dated 21st February, 2022. The Superintendent of Police, Khagaria received the said letter and immediately, thereafter, on the 23rd of February 2022, the case was registered.

28. Under such circumstances, this Court, at the initial stage of the proceeding, is not in a position to hold that due to such delay prosecution case suffers from concoction. At the initial stage of quashing of FIR and charge-sheet, this Court is doubtful as to whether the Court can look into the inherent contradictions in the statements made by other three Homeguards who were posted at the relevant point of time as



Homeguards of the Principal Judge, Family Court at Khagaria.

29. In *Madan Rajak v. State of Bihar and Ors.*, reported in (2015) 16 SCC 269, the Hon'ble Supreme Court was pleased to hold that at the stage of determination of an application for quashing of a criminal proceeding under Section 482 of the CrPC (Article 226 of the Constitution), the only question to be determined is whether material on record disclosed a *prima facie* case, leading to triable offence. It is not possible to overlook statements of witnesses under Section 161 Cr.P.C. Reason for delayed recording of statements is also disclosed in the Daily Diary Report. Evaluation of truth and falsity thereof, will be possible only after evidence is recorded. At the present juncture, to quash the proceedings in exercise of the power vested in High Court was clearly not made out. Accordingly, the order of quashing of criminal proceedings was set aside and the accused was directed to face the criminal trial. In paragraph 10 of the said judgment, it is recorded by the Hon'ble Supreme Court:-

“10. It is not necessary for us to evaluate the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure. The only question to be determined is, whether the statements disclosed a prima facie case,



leading to an offence triable under the provisions of the Penal Code. We are of the considered view, that it is not possible for us to overlook the statements of the witnesses recorded, reference to some of which, has been indicated in the instant order. The reason for the delayed recording of statements is also disclosed in the daily diary report. The evaluation of the truth or falsity thereof, will be possible only after evidence is recorded, in the matter. At the present juncture to quash the proceedings initiated against the accused by quashing the summoning order dated 6-4-2011 in exercise of the power vested in the High Court under Section 482 CrPC is clearly not made out.”

30. In the instant case, the learned Advocate for the Petitioners submits that written complaint submitted by Gautam Kumar did not contain the alleged incident of altercation between Petitioner and his deceased father on the issue, as to why entrance gate of Petitioner remain unattended and opened. On the contrary, the informant stated that the Judge and his wife used to ask his father to sweep and clean official residence of the Petitioner daily. His father denied to perform such work. Then, Petitioner and his wife assaulted him with the piece of



brick and fists and slaps, and also pushed him, as a result, he fell down and received serious injury on his head. It is also stated by the complainant that he heard the incidence from the Satyendra Paswan, Homeguard. The said Satyendra Paswan and other Homeguards, who were posted in the residence of the Petitioner as Homeguards stated in their statements under Section 161 of the Code of Criminal Procedure as well as before the Enquiry Committee of Public Grievance Redressal Forum that the victim was assaulted by the Petitioner with the help of butt of rifle and piece of brick.

31. The learned Advocate for the Petitioners invites this Court to consider the inherent contradictions in the statements made by the alleged witnesses to the Informant and subsequently to the Enquiry Officers of Public Grievance Redressal Forum and then to the Investigating Officer. In view such contradictions, the statements of the alleged eye-witnesses can not be taken into consideration and those should be discarded at this stage.

32. This Court is not in a position to discard the statements of the witnesses recorded under Section 161 of Cr.P.C. at this stage. The statement under Section 161 of the Cr.P.C. are not to be treated as evidence of witnesses. The said



statements can only be taken into account for contradictions with the subsequent statements made by the witnesses in the Court during evidence. Therefore, at the stage of quashing, uncontroverted statements under Section 161 of the Cr.P.C. cannot be said to be falsely made by the alleged eye-witnesses and the prosecution story was subsequently developed.

33. Now, let me consider the medical evidence collected by the I.O. in connection with this case.

34. The victim was first examined by Dr. Shubham Kumar Sinha at Sadar Hospital, Khagaria on 1st of February, 2022 and he recorded the following injuries on the person of the deceased:-

- (i) Slight abrasion on the base of nose.
- (ii) Slight abrasion on the left middle finger.

35. At the time of his examination, the patient was unconscious. It is also recorded that the patient was very serious, hence referred to higher centre. Further reports are awaited from higher centre.

36. The Informant was not supplied with any injury report or bedhead ticket of the deceased maintained by the Ishwar Hospital, Begusarai. The victim died on 14th of February, 2022 and his post-mortem was done by the Associate Professor,



Forensic Medicine of PMCH, Patna. During post-mortem examination, the Autopsy Surgeon did not find any injury, external or internal, in the body of the deceased. According to the Autopsy Surgeon, the cause of death of the victim was Cerebral Anoxia resulting from Intracranial Hemorrhage. On deception, it is found left sided intra cerebral hemorrhage, basal ganglia, mid brain, pons with intra ventricular extension. There was patchy sub-arachnoid hemorrhage both side cerebral surface too.

37. Paragraph 92 of the case-diary dated 19th of September, 2022 shows that the Investigating Officer produced NCCT Brain of the victim done by Mediversal Diagnostic, Begusarai and the Medical Officer found a non-displaced linear fracture on occipital bone near midline. The CT-scan was done on 1st of February, 2022 itself at Begusarai. The CT-scan also showed acute subdural hematoma at left fronto parietal sub clavian with right fronto-parietal sub clevarian. Bleed in subarachnoid component. M.I. - Mole on Jugular notch (as written in the copy of the case-diary produced by the prosecution).

38. The Medical Officer opined that the injury of the deceased was caused by hard and blunt substance. The



injury may also be caused due to fall on hard surface.

39. At this stage, it is not possible for the Court to consider as to whether fracture found on the occipital bone of the deceased was caused due to physical assault or the victim fell down on the ground when the Petitioner snatched away the rifle from the hands of the victim. It is also not possible for the Court to consider as to whether the Autopsy Surgeon found non-displaced linear fracture on the occipital bone of the head of the victim at the time of post-mortem examination or the supplementary injury report was manufactured by the prosecution. Answer to such question can only be ascertained on examination and cross-examination of the Medical Officers during the trial of the case.

40. From the materials in the case-diary, the Court finds that the offences alleged to have been committed by the Petitioner were *prima facie* made out from the complainant's F.I.R., statement of witnesses, medical documents, charge-sheet etc. The veracity of the statements of the witnesses before the Investigating Officer can only be considered at the time of trial during their examination. At this stage, this Court is not in a position to quash the criminal proceedings against the Petitioner.



41. Accordingly, the instant writ petition is considered and dismissed, on contest.

42. There shall, however, be no order as to costs.

(Bibek Chaudhuri, J)

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