

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32735 of 2016**

Arising Out of PS. Case No.-463 Year-2015 Thana- BAGHA District- West Champaran

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1. Azad Khan, S/o Late Razaque Khan, resident of Mohalla-Purani Bazar Ramnagar, District-West Champaran.
 2. Bablu Khan @ Md. Motiullah Khan, S/o Hakik Khan, resident of Mohalla-Pawaria Tola, Ward No.27, Bagaha, P.S.-Bagaha, District-West Champaran.
 3. Khush Mohammad, S/o Late Ajim, resident of Mohalla-Mastan Tola, Ward No.24, Bagaha, P.S.-Bagaha, District-West Champaran.
 4. Seikh Raju @ Raju, S/o Maruf Khan, resident of Village-Murali, P.S.-Chautarwa, District-West Champaran.

... .. Petitioners

Versus

1. The State of Bihar
2. Munna Khan, S/o Late Majid Khan, resident of Mohalla-Pawaria Tola Ward No.27, Bagaha, P.S.-Bagaha, District-West Champaran.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Vijay Kr. Singh No. 1, Advocate
For the State	:	Mr. Lalan Kumar, APP
For the opposite party no.2:		Mr. Bashishth Narain Mishra, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 15-04-2024

Heard Mr. Baxi S.R.P. Sinha, learned Senior Counsel appearing on behalf of the petitioners and Mr. Lalan Kumar, learned APP for the State duly assisted by Mr. Bashishth Narain Mishra, learned counsel for the opposite party no.2.

2. The present application has been filed by the petitioners for quashing the order taking cognizance dated 16.06.2016 passed by learned A.C.J.M., Bagaha, West



Champanan in Bagaha P.S. Case No.463 of 2015, whereby the learned jurisdictional Magistrate has taken cognizance for the offences punishable under Sections 147, 149, 307, 323, 325, 341 and 504 of the Indian Penal Code (for short 'IPC') against the petitioners.

3. The prosecution case is based upon written report of one Munna Khan, the informant of this case on 15.11.2015 at about 8.30 A.M. to the Officer-in-Charge, Bagaha Police Station stating therein that on 15.11.2015 at about 5:30 A.M. on the noise of several persons, he woke-up and opened the gate of his house. The informant further alleged that these petitioners along with five others were constructing hut on his land and on protest, the informant was caught by some accused persons and was assaulted by fist and slaps. On alarm, his sons, namely, Arif, Sanu, Janus and his nephew Afroj came to his rescue and upon this, Afroj was assaulted by *khanti* by the accused Azad Khan and after sustaining injury, he fell down. Accused Sonu Khan and Pappu Khan assaulted by *farsa* to his son Sanu Khan. Accused Bablu Khan and Hakik Khan assaulted the informant



by *lathi*. When the *Bhabhi* of the informant, namely, Saida Khatoon came there, accused Majre Alam and Raju assaulted by leg, fist and *lathi*. The accused Khus Mohammad and Monu Khan assaulted his eldest son, namely, Arif by *lathi*, fist etc. On alarm, the villagers assembled and took the injured in Hospital for treatment.

4. It is submitted by learned senior counsel appearing on behalf of the petitioners that the police after investigation submitted charge sheet No.9/2015 datd 27.01.2016 exonerating petitioners, where during investigation just before submitting aforesaid charge-sheet, an application was filed before learned A.C.J.M., Bagaha by the informant stating thereof that the injured witnesses were not examined during investigation and, as such, their statement recorded under Section 161 of the Code of Criminal Procedure (for short 'CrPC') were not recorded. It is further submitted by learned senior counsel that Investigating Officer of this case through a detailed judicial order dated 13.04.2014, was directed to record the statement of injured witnesses under Section 161 of the



CrPC and a show-cause was also issued to him that as to why he not be prosecuted for the offences under Sections 218, 219 and 221 of the IPC. Subsequent to the said order, the re-investigation was made to the extent recording the statement of injured witnesses under Section 161 of the CrPC for which another charge-sheet was submitted bearing No.145/2016 dated 13.05.2016, where again, the petitioners were not sent up and were exonerated. It is further pointed out by learned senior counsel that the manner in which the learned Jurisdictional Magistrate took cognizance in this matter is apparent from Annexure-5, which is charge-sheet no.145/2016, where in column no.10, which is meant for seized articles, a general order in very cryptic manner was made to take cognizance for the offences under Sections 147, 149, 307, 323, 325, 341 and 504 of the IPC against all accused persons on 16.06.2016, which subsequently reduced in form of order on that very date.

5. It is pointed out by learned senior counsel that by differing with police finding of investigation, where petitioners were exonerated even after recording the



statement of injured witnesses, without supplying any reasons, learned Trial Court took cognizance against petitioners in very mechanical and cryptic manner, which is against the established principle of law. In support of his submission, learned senior counsel has relied upon a decision of Hon'ble Supreme Court in the matter of **Almohan Das v. State of W.B., [1968 SCC OnLine SC 85]**.

6. Mr. Lalan Kumar, learned APP for the State duly assisted by Mr. Bashishtha Narain Singh, learned counsel appearing on behalf of opposite party no.2 while opposing the application submitted that taking cognizance is a subjective satisfaction of the learned Jurisdictional Magistrate and on that score, the order of cognizance cannot be set aside.

7. It would be apposite to reproduce the order of cognizance dated 16.06.2016 by learned A.C.J.M., Bagaha on final form in column 10 submitted by police as well as the order dated 16.06.2016, which are as under:-

अंतिम प्रपत्र/रिपोर्ट

(FINAL FORM/REPORT)

(दण्ड प्र० संहिता की धारा 173/174 के अधीन)

(In the court of)



1. जिला-प० चम्पारण थाना-बगहा वर्ष-2016 प्राथमिकी सं०-463/15 तिथि-15.11.15

2. अंतिम रिपोर्ट/आरोप पत्र सं०- 145/15 3.तारीख- 13.05.16

4. [1] अधिनियम (Act) भा०द०वि० धाराएं (Sections) 147,149,341,323,
[2] अधिनियम (Act) धाराएं (Sections) 325,307,504
[3] अधिनियम (Act) धाराएं (Sections)
[4] अन्य अधिनियम एवं धाराएं (Other Act & Sections)

5. अंतिम प्रपत्र/रिपोर्ट का प्रकार:- आरोप पत्र /साक्ष्य के अभाव में आरोप-पत्र नहीं दिया गया/ अंतिम रिपोर्ट सत्य-पता नहीं चला/ अंतिम रिपोर्ट सत्य-खोज नहीं हो सकी/ अंतिम रिपोर्ट सत्य अपराध उपसांसित किया गया/ अंतिम रिपोर्ट-नहीं घटित हुई।

(Type of Final Form/Report:- Charge Sheet/Not Charge sheeted for want of evidence/FRT Undetected/ FRT Untraced/FRT offence abated/FR Unoccured)

6. यदि अ० रि० अघटित हो:- मिथ्या/तथ्यों की भूल/विधि की भूल/असंज्ञेय/दीवानी प्रकृति का
(If F.R. Unoccured: False/Mistake of Fact/Mistake of law/non-cognizable/ Civil Nature.)

7. यदि आरोप पत्र हो तो मूल/अनुपूरक
(In Charge-Sheet-Original/Supplementary)

8. अनुसंधान पदाधिकारी का नाम... राम विलास रमणपदनाम-पु०अ०नि०
(Name of I.O) (Rank)
सं०-बगहा थाना
(No.)

9. (क) परिवादी/सूचनादाता का नाम- मुन्ना खाँ
(ख) पिता का/ पति का नाम- स्‍व० मजीद खाँ, सा० पवरिया टोला वार्ड 27
थाना-बगहा जिला-पं० चम्पारण

10. अनुसंधान के दौरान बरामद/जप्त ऐसी संपत्तियों/वस्तुओं/दस्तावेजों का विवरण जिन पर निर्भर किया गया हो। यदि आवश्यक हो तो अलग से सूची संलग्न की जा सकती है।

क्रम सं०	संपत्ति का वर्णन	प्राक्कलित मूल्य(रुपये में)	थाना का संपत्ति रजिस्टर सं०	किससे/कहां बरामद या	निपटाव
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1	2	3	4	जप्त की गयी	6
		Cog taken u/s 147,149,307,323,325,341 & 504 against all accused persons named in FIR. Sig/- 16/06/16			

“Bagaha P.S. 463/15
In the Court of A.C.J.M, Bagaha
Bagaha PS case no.463/15
State
vs
Azad Khan

16.06.16 आरोप पत्र सं० 09/16 दि० 27.01.16 एवं पुरक आरोप पत्र सं०
145/16 दि० 13.05.16 प्राप्त हुआ।

आरोप पत्र एवं वाद दैनिकी का अवलोकन किया।
अवलोकन से स्पष्ट है कि अभि० 1. आजाद खान 2. सोनु खान 3.
पप्पु खान 4.बब्लु खान 5.मोनू खान 6.हकीक खान 7.मोजरे आलम 8.
राजु 9.खुश मोहम्मद के विरुद्ध धारा— 147,149,307,323,325,341,
504 भा०द०वि० के अन्तर्गत कारवाई हेतु पर्याप्त साक्ष्य वाद दैनिकी में
उपलब्ध हैं। इसलिए उपरोक्त 09 अभियुक्त के विरुद्ध धारा
147,149,307,323,325,341,504 भा०द०वि० के अन्तर्गत संज्ञान लिया
जाता है। सभी वांछित अभियुक्तों के विरुद्ध सम्मन निर्गत करने का
आदेश दिया जाता है।

लेखापित
ह०/—
अपर मु०न्या०दण्डा०

8. It would be apposite to reproduce Para-9 of
the legal report of Hon'ble Supreme Court as passed in the
matter of **Almohan Das case (supra)**, which runs as
under:-

“9. It was contended before us that under
Section 209(1) of the Code of Criminal
Procedure, a charge may be framed only if in the



view of the committing Magistrate the evidence on record is sufficient to justify conviction of the accused. Section 209 of the Code provides:

“When the evidence referred to in Section 208 sub-sections (1) and (3), has been taken, and he has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.”

In terms Section 209 applies to cases which are instituted otherwise than on a police report. But the principle underlying that section applies to cases which are instituted on a police report. A Magistrate holding an enquiry is not intended to act merely as a recording machine. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence



is totally unworthy of credit, it is his duty to discharge the accused : if there is some evidence on which a conviction may reasonably be based, he must commit the case. The Magistrate at that stage has no power to evaluate the evidence for satisfying himself of the guilt of the accused. The question before the Magistrate at that stage is whether there is some credible evidence which would sustain a conviction.”

9. In view of the aforesaid factual and legal submissions, it appears that the cognizance order passed by learned Jurisdictional Magistrate was taken by endorsing the order of cognizance in column-10 of the charge-sheet No.145/2016 dated 13.05.2016 itself, which is meant for seizure items connected with occurrence in issue. It also appears that no reason was supplied while taking a different note with the finding of investigation by learned jurisdictional Magistrate, particularly, when petitioners were exonerated even after availability of statement of injured witnesses as recorded under Section 161 of the CrPC.

10. Accordingly, by taking a guiding note of the legal report of Hon'ble Supreme Court as passed in the matter of **Almohan Das Case (supra)** and in view of fact



as discussed above, the impugned order taking cognizance dated 16.06.2016 passed by learned A.C.J.M., Bagaha, West Champaran in Bagaha P.S. Case No.463 of 2015 is, hereby, quashed and set aside *qua* petitioners with a direction to the learned Jurisdictional Magistrate to pass a fresh order in accordance with law by supplying reasons while differing with investigation report, as to avoid the impression of mechanical and cryptic approach.

11. The application stands allowed to aforesaid extent.

12. Office is directed to communicate a copy of the judgment to the court of learned Jurisdictional Magistrate without delay.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.04.2024
Transmission Date	20.04.2024

