

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Criminal Misc(Pet.) No. 244/2011

1. Nopa Ram S/o Kumbha Ram
2. Ramu Ram S/o Kumbha Ram
3. Pema Ram S/o Khumbha Ram
4. Om Prakash S/o Nopa Ram
5. Puran Ram S/o Nopa Ram
6. Bhanwar Lal S/o Pema Ram

All B/c Jat, R/o Mala Ki dhani Sabalpura, Tehsil Nava Police
Station Chitawa District Nagaur

-----Petitioner

Versus

1. State Of Rajasthan
2. Soni Devi W/o Shri Hanuta Ram B/c Jat R/o Sabalpura Tehsil
Nava District Nagaur.

-----Respondent

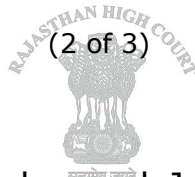
For Petitioner(s)	:	Mr. Nishant Bora
For Respondent(s)	:	Mr. Vikram Singh Rajpurohit, Dy.G.A. Mr. Ravindra Singh, AGA Mr. Hanuta Ram present in person

HON'BLE MR. JUSTICE FARJAND ALI

Order

19/11/2024

1. By way of filing the instant Misc. Petition, a challenge has been made to the order dated 02.06.2010 passed by the learned Judicial Magistrate, First Class, Kuchaman City in Case No.164/2010 whereby he took cognizance of offence under Sections 147, 341, 323, 325 r.w. Section 149 of the IPC and issued process against the petitioners. Challenge has also been made to the order dated 29.01.2011 passed by the learned Additional Sessions Judge, Parbatsar in Criminal Revision



No.52A/2010, whereby the learned Judge dismissed the revision petition.

2. The matter was investigated thoroughly and a detailed negative final report got submitted by the police observing therein that the complainant party made an assault over the petitioners' party in which one person was murdered and the complainant party was charge-sheeted because they were aggressors. It was specifically observed that a false case was lodged at the behest of the complainant.

2.1 The complainant made a protest petition in which the learned Magistrate initiated an inquiry and then passed the order impugned dated 02.06.2010. The learned Sessions Judge perhaps did not consider the legal and factual aspects of the matter and thus he failed to exercise his revisional jurisdiction as it is observed by me.

3. It is neigh well settled principal of law that whenever a Magistrate takes cognizance of the offence on a protest petition, he is required to show his disagreement with the police report. A definite opinion has to be made or at least the grounds of final report should be considered before proceeding further in the matter. Evidently, the above task has not been undertaken.

4. The other aspect of the matter would be that the complainant party was charge-sheeted for committing an offence of making assault, causing serious injuries and killing the deceased Prabhu Ram @ Prabhu Dayal in furtherance of their common intention. They were prosecuted in Sessions Case No.14/2008, after a rigorous trial, one of the accused Hantu Ram was convicted for offence under Sections 302/34 & 323/34 of the



IPC. It would be relevant to mention here that in Para Nos.99 & 100 of the judgment dated 15.07.2014 in Sessions Case No.07/2008 (14/2008), the learned Sessions Judge has elaborately dealt with the defence of the complainant party and it was concluded that the defence taken by them could not be established. The defence in that case was related to the incident which is the subject matter of case in hand.

5. In view of the above, the instant Misc. Petition is allowed. The order dated 29.01.2011 passed by the learned Additional Sessions Judge, Parbatsar as well as order dated 02.06.2010 passed by the learned Judicial Magistrate, First Class, Kuchaman City, District Nagaur are hereby quashed and set aside. The petitioners are exonerated from the charges.

(FARJAND ALI),J

6-Mamta/-