

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 2395/2023

Ghanshyam Tanwar S/o Hariram Tanwar & Ors.

-----Petitioners

Versus

State Of Rajasthan & Anr.

-----Respondents

For Petitioner(s)	:	Mr. V.R.S. Bajwa, Sr. Adv. with Mr. Manu Agarwal, Adv.
For Respondent(s)	:	Mr. Prashant Sharma, PP

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

26/05/2023

Let notice should go to respondent No.2 through both the processes.

Requisites be filed within 5 days, failing with, this petition shall stand dismissed automatically without any further reference to the Bench.

Learned Public Prosecutor accepts notice on behalf of the State-respondent.

On filing of the requisites within time, the Registry shall issue notice through both the processes.

The petitioners are accused in FIR No.246/2012 registered with Police Station Bhiwadi, for offences under Sections 143 and 307 of IPC and Section 3/25 of The Arms Act.

After completion of the investigation, the Police submitted a negative report on 04.03.2013, thereafter a protest petition was filed in the case by the complainant. The learned Magistrate while inquiring the matter sent it to the Police for further investigation

and again the Police submitted a negative report on 19.12.2018. Thereafter, again a protest petition was filed and on that protest petition, the learned Magistrate took cognizance on 03.04.2019 for offences under Sections 143 and 307 of IPC and Section 3/25 of The Arms Act.

The petitioners had challenged the aforesaid order before the Sessions Court in Criminal Case No.652/2018, the same was dismissed on 06.02.2023.

Learned Senior Counsel contends that once the Magistrate was of the view that the offence / offences, triable by Court of Session was made out, it should have followed the mandatory provisions of Sub-Section (2) of Section 202 Cr.P.C., which requires that when the offence complained of is triable exclusively by the Court of Session, the Magistrate shall call upon the complainant to produce all his witnesses and examine them on oath. Without following the mandate of law cognizance has been taken which is bad in law.

Considering the submission aforesaid, operation of the impugned order of cognizance and all subsequent proceedings stands stayed till further order.

Call for lower Court record.

List on 19.09.2023.

(BIRENDRA KUMAR),J