

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18283 of 2015

Arising Out of PS.Case No. -38 Year- 2012 Thana -BARURAJ District- MUZAFFARPUR

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1. Md. Shamshad Alam @ Md. Samsad Alam Son of Md. Samiullah
2. Kaiser @ Kaishar Khatoon W/o Khursheed Alam
3. Habiban Khatoon Wife of Samiullah All residents of Village and P.S. Baruraj,
District - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Syed Firoz Raza, Adv.

For the Opposite Party/s : Mr. Braj Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-05-2015

In the present application filed under section 482 of the Code of Criminal Procedure (in short 'the Code') the petitioners have challenged the order dated 15.10.2014 passed by the learned Judicial Magistrate 1st Class, Muzaffarpur, whereby he has taken cognizance for the offence punishable under section 302 read with 34 of the Indian Penal Code.

It has been contended that even if the entire allegations made in the First Information Report would be believed to be true, the petitioners cannot be charged for the offence punishable under section 302 of the Indian Penal Code. He has further submitted that in course of investigation the police could find the allegations to be true only

against Md. Jamshaid and Md. Khurshaid and, therefore, they were charge sheeted but so far as the petitioners are concerned, they were not sent up for trial.

On the other hand, learned counsel for the State has submitted that there is allegation against the petitioners that they also participated in the alleged offence. He has further submitted that in paragraph 10 of the case diary Md. Ramjan has corroborated the allegations made in the First Information Report and therefore, there was no illegality in the order passed by the Magistrate whereby, differing with the police report submitted under section 173(2) of the Code, he has summoned the petitioners to face trial for the offence punishable under section 302/34 of the Indian Penal Code.

Having heard the parties, I do not find any reason to interfere with the impugned order passed by the court below at this stage. Since the allegations made in the First information Report and the materials collected in course of investigation make out a prima facie case against the petitioners, no fault can be found with the impugned order by which the petitioners have been summoned. However, at the stage of framing of charge, the court below shall consider this aspect of the matter as to whether or not charge can be framed against the petitioners for the offence under section 302 with aid of section 34 of the Indian Penal Code. In case, there is no

material to show that the petitioners had participated in any manner in committing the murder of the deceased, the trial court shall pass appropriate order in accordance with law without being prejudiced in any manner by this order.

With these observations and directions, the application is disposed of.

(Ashwani Kumar Singh, J)

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