

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 17697 of 2013

Arising Out of PS.Case No. -51 Year- 2011 Thana -SONBERSA District- SAHARSA

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Dinesh Sharma Son of Lakshmi Sharma Resident of Village- Bhada, P.S.-
Sonbarsa Raj, District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. Manoj Ram Son of Jogi Ram Resident of Village- Bhada, P.S.-
Sonbarsa Raj, District- Saharsa.
3. Nawal Ram S/O Late Kokan Ram Resident of Village- Bhada, P.S.-
Sonbarsa Raj, District- Saharsa.
4. Jogi Ram Son of Late Kokan Ram Resident of Village- Bhada, P.S.-
Sonbarsa Raj, District- Saharsa.
5. Jaikant Sada Son of Late Adhin Sada Resident of Village- Bhada, P.S.-
Sonbarsa Raj, District- Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

6 02-07-2015 Heard learned counsel for the petitioner,

learned A.P.P. for the State and learned counsel for the

opposite parties no. 2 to 5.

The present application has been filed under
Section 482 of the Code of Criminal Procedure, 1973
(hereinafter referred to as the 'Code') against the order dated
13.03.2013 passed by the Ad hoc Additional Sessions Judge,
Ist, Saharsa in Sessions Trial No. 219 of 2012 by which
charges have been framed against the opposite parties no. 2 to
5 under Section 435 of the Indian Penal Code differing from
the order taking cognizance under Section 436 of the Indian
Penal Code after allowing the petition filed by the opposite

parties no. 2 to 5 under Section 227 of the Code.

Learned counsel for the petitioner, who is the informant of the case, giving rise to Sessions Trial No. 219 of 2012 arising of Sonbarsa Raj P.S. Case No. 51 of 2011 submits that after due and proper investigation the police had submitted chargesheet under Section 436 of the Indian Penal Code and the Court after going through the materials on record had taken cognizance against the opposite parties no. 2 to 5 under Section 436 of the Indian Penal Code by order dated 10.07.2012. The certified copy of the order has been produced by learned counsel for the petitioner. Let the same be kept on record. It is submitted that the opposite parties no. 2 to 5 filed a petition under Section 227 of the Code on 11.12.2012 and the Court had passed a non speaking and perfunctory order framing charge under Section 435 of the Indian Penal Code instead of Section 436 of the Indian Penal Code without any factual or legal justification.

Learned A.P.P., upon going through the case diary, submits that there is sufficient material to show that the offences committed by the opposite parties no. 2 to 5 come under the purview of Section 436 of the Indian Penal Code and thus there appears to be error in the order impugned.

Learned counsel for the opposite parties no. 2 to 5 submits that the impugned order does not suffer from any infirmity. However, he was not able to show to the Court as to

how from the factual findings of the case and the materials collected during investigation and recorded in the case diary, Section 435 of the Indian Penal Code and not Section 436 of the Indian Penal Code is made out against the accused persons, since the Court concerned had taken cognizance under Section 436 of the Indian Penal Code after applying its judicial mind and going through the materials collected during investigation and submitted along with the chargesheet.

Having considered the rival contentions, this Court is in agreement with the submission of learned counsel for the petitioner as has been supported by learned A.P.P.

There appears to be sufficient material at this stage for the accused persons (opposite parties no. 2 to 5) to face trial under Section 436 of the Indian Penal Code. Accordingly, the order impugned dated 13.03.2013 is quashed. The application filed by the opposite parties no. 2 to 5 under Section 227 of the Code dated 11.12.2012 stands rejected and the Court shall now frame charges against the opposite parties no. 2 to 5 under Section 436 of the Indian Penal Code and thereafter the trial shall commence.

The application stands disposed off.

(Ahsanuddin Amanullah, J.)

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