

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40235 of 2012

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1.Raju Mahto
2.Awadhesh Mahto
Both sons of Ramjee Mahto
3.Mintu Mahto @ Mintu @ Mitu
4.Sudhir Mahto @ Sudhir Kumar
Both sons of Ram Ishwar Mahto
5.Om Prakash Singh son of Late Ram Babu Singh
All resident of village-Moriyawan, P.S.-Dhanaruwa, District- Patna

.... Petitioner/s

Versus

1.State of Bihar
2.Ramashish Mochi son of Late Nathuni Mochi, resident of village-Moriyawan, P.S.-Dhanaruwa, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Tiwary, Advocate
For the Opposite Party/s : Mrs. Veena Kumari Jaiswal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

3 15-04-2015 The instant application under section 482 of the Code of Criminal Procedure has been filed for quashing of the order dated 21st July, 2012 passed by the learned A.D.J.-1-cum-Special Judge, Patna in Special Case No.16 of 2010 whereby and whereunder he has rejected the application dated 8.9.2010 filed under section 297 of the Code of Criminal Procedure for discharge of the petitioners from the aforesaid case.

The prosecution case in brief is that on 7th April, 2009 the accused persons named in the FIR intentionally abused by taking caste name and assaulted the informant and his wife with

intent to humiliate them in a place within public view.

The contention of the petitioners is that there is no material available on record for framing charge against them. The petitioners are innocent and have falsely been implicated in the case. The court below did not appreciate the materials collected in course of investigation in proper perspective and rejected the application for discharge.

On the other hand, learned counsel for the State has contested the matter. He has submitted that the petitioners are named in the FIR and in course of investigation, the investigating agency found sufficient materials against them and, accordingly, they have been sent up for trial.

I have gone through the records. The court below has examined the materials available in the case diary and has contended that the witnesses have supported the prosecution case in paragraphs 3, 4, 7, 8, 9, 10 and 30 of the case diary.

It is well settled that an application for discharge of the accused can be allowed if after considering the record of the case and the documents and after hearing the submissions of the accused and the prosecution, the court considers that there is no sufficient ground for proceeding against the accused, i.e., either there is no legal evidence or that the facts did not make out any

offence at all. The standard of test, proof and judgment which is to be finally applied before finding an accused guilty or otherwise is not to be applied at the stage of consideration of an application for discharge of the accused. At this stage, even a very strong suspicion founded upon the materials leading the court to form a presumptive opinion as to the existence of factual ingredients constituting an offence alleged, may justify the framing of charge. Further, the court is not supposed to make roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial.

Regard being had to the nature of allegations made in the FIR and materials collected in course of investigation, the court below has rejected the application for discharge filed on behalf of the petitioners.

I find no illegality in the order impugned. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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