

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40343 of 2012

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1. Md. Asif Ali @ Nanhe son of Abdul Hai Ansari
2. Abdul Hai Ansari son of Late Hakim Abdul Quawi
3. Shabana Khatoon wife of Abdul Hai Ansari
All resident of village - Gogri, P.O.-Gogri, P.S.-Gogri, District-
Khagaria

.... Petitioner/s

Versus

1.State of Bihar
2. Najreen Kahkasha wife of Md. Asif Ali @ Nanhe daughter of Md.
Mojahir Ansari, resident of village-Nala Road, Jai Prakash Nagar, Ward
No.22, P.S.-Khagaria, District- Khagaria

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anamul Haque, Advocate

For the Opposite Party/s : Mr. Sucheta Yadav, 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 (hereinafter referred to as “the Code) has been filed for quashing of the order dated 18.8.2012 passed by the learned Sub Divisional Judicial Magistrate, Khagaria in connection with Khagaria P.S. Case No.322 of 2011 by which the application of the petitioners filed under section 239 of the Code of Criminal Procedure for discharge has been rejected.

The petitioners were named in the FIR instituted under sections 341, 323, 379, 498A and 506 of the Indian Penal Code as well as sections 3 and 4 of the Dowry Prohibition Act. The police investigated the case and on conclusion of investigation charge-sheet was submitted against the petitioners. The Magistrate

concerned took cognizance of the offence. At the stage of charge an application under section 239 of the Code was filed on behalf of the petitioner which has been dismissed by the impugned order dated 18th August, 2012.

Learned counsel for the petitioners has submitted that 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. It would appear that initially FIR was registered against eight accused persons and after conducting investigation the police submitted charge-sheet only against these petitioners. The learned Sub Divisional Judicial Magistrate while passing the impugned order has taken into consideration not only the allegations made in the FIR but also the materials available in the case diary and has come to a conclusion that there is sufficient material in the case diary to proceed with

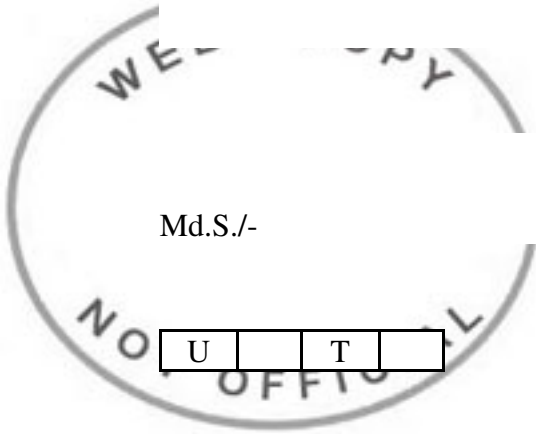
the case.

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.

I find from the record that the court below has considered the allegations made in the FIR and the materials collected in course of investigation while passing the impugned order. In my considered opinion, the court below has not committed any illegality in rejecting the application of the

petitioners for their discharge.

Accordingly, the application is dismissed.



(Ashwani Kumar Singh, J)

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