

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47494 of 2012

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1. Mukesh Mahto @ Mukesh Kumar Mahto son of Bharat Mahto resident of village Akuraha, P.s. Kanti, District Muzaffarpur.
 2. Sharfuddin son of Md. Israjul Miyan resident of village Akuraha, P.S. Kanti District Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Pandey

For the Opposite Party/s : Mr. Anuj Kumar Shrivastava

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-04-2015

This application under section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 20.09.2012 passed by the learned 6th Additional Sessions Judge, Muzaffarpur in connection with Sessions Trial No. 125 of 2012 arising out of Minapur P.S. Case No. 47 of 2011 by which the learned 6th Additional Sessions Judge, Muzaffarpur has dismissed the application filed under section 227 of the Code of Criminal Procedure for discharge from the case in which cognizance has been taken for the offence punishable under sections 302 and 201/34 of the Indian Penal Code.

Learned counsel for the petitioners has submitted that though the alleged occurrence of murder took place on 14.02.2011 but the F.I.R. was instituted on 18.02.2011 and there is no reasonable explanation for the delay caused in filing the first information report. Moreover, the F.I.R. is based on circumstantial evidence and there is no sufficient material available on the record on the basis of which the petitioners could have been put on trial. On the other hand, learned counsel for the State has submitted that the Fardbeyan of the informant was recorded on 17.02.2011 at about 12.30 A. M. but the F.I.R. was registered on the next day i.e. on 18.02.2011. He has conceded that though the

F.I.R. was based on suspicion but in course of investigation sufficient materials have come on the basis of which a case of circumstantial evidence is made out against the petitioners.

Having heard learned counsel for the parties, I am of the view that at the stage of framing of charge meticulous analysis of the materials on record cannot be made. 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 and proof of judgment which is to be finally applied before finding the accused guilty or otherwise is not to be applied at the stage of consideration for discharge of the accused. At this stage even on a strong suspicion founded on the material on record if the Court comes to a presumptive opinion that the offence alleged is made out, that may justify framing of charge. Further, the Court is not supposed to make a roving enquiry into the pros and cons of the matter and weigh the probating value of the material as if it is conducting the trial.

I find from the impugned order that the court below has considered the materials collected in course of investigation before forming an opinion to charge the accused for the offence alleged.

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

(Ashwani Kumar Singh, J)

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