

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40038 of 2012

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1. Ram Dular Yadav
2. Binod Yadav

Both son of Shiv Nath Yadav, resident of village - Sanya, Police
Station - Jagdishpur, District - Bhojpur

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Baxi S.R.P.Sinha, Sr. Advocate
: Mr. Rahul Nath, Advocate
For the Opposite Party/s : Mr. S. Ehteshamuddin, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH
ORAL ORDER

3 15-04-2015 This application under section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) has been filed by the petitioners seeking quashing of the order dated 4.7.2012 passed by the learned 2nd Additional Sessions Judge, Bhojpur at Ara in connection with Jagdishpur P.S. Case No.106 of 2004 corresponding to Sessions Trial No.170 of 2010 whereby and whereunder the application filed under section 227 of the Code of Criminal Procedure for discharge, has been rejected.

The petitioners have been made accused in the aforesaid case registered under sections 25(1-AA), 26 and 35 of the Arms Act. It would appear from the first information report that a raiding party of the police had intercepted a Marshal jeep and



recovered one automatic AK-47 rifle from it. Some of the accused persons were arrested by the police on the spot whereas these two petitioners managed to escape. The apprehended accused persons disclosed the name of the petitioners during interrogation. It has also come in the FIR that the accused persons had purchased the aforesaid prohibited illegal arm at the cost of Rs.2,40,000/- from one Umesh Yadav and these petitioners had actually supplied the aforesaid automatic AK-47 rifle to Umesh Yadav. In course of investigation, the witnesses have supported the prosecution case. Considering these materials, the court below has dismissed the application filed on behalf of the petitioners for their discharge.

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. The court below has



considered the materials on record and has come to a conclusion that there are sufficient materials 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 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)

Md.S./-

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