

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14266 of 2013

Arising Out of PS.Case No. -67 Year- 2009 Thana -RAFIGANJ District- AURANGABAD

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1. Abhay Singh, S/O Deonandan Singh, Resident Of Village- Ashabigha, P.S.- Rafiganj, District- Aurangabad.
 2. Bharat Singh, S/O Late Tapeswar Singh, Resident Of Village- Mamka, P.S.- Mofassil, District- Aurangabad.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Navin Kumar @ Navin Kumar Singh, S/O Late Jagarnath Singh, Resident Of Village- Ashabigha, P.S.- Rafiganj, District- Aurangabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Anuradha Singh (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

4 16-07-2015 Heard learned Senior Counsel Mr. Surendra Kumar Singh for the petitioners. Heard learned A.P.P. for the State.

2. This criminal miscellaneous application has been filed by the petitioners for quashing the order dated 21.02.2013 passed by Ad-hoc Additional Sessions Judge-II, Aurangabad in Sessions Trial No.02 of 2012 arising out of Rafiganj P.S. Case No.67 of 2009 whereby the learned Ad-hoc Additional Sessions Judge-II, Aurangabad rejected the application filed by the petitioners for discharge.

3. From perusal of the record, it appears that the F.I.R. was lodged by the informant Navin Kumar Singh alleging that the

petitioners along with other co-accused armed with various weapons, including firearms came and then co-accused Munna Singh fired at the informant and Anirudh Singh, co-accused, assaulted the informant's brother. According to the informant, the bullet hit at his thigh. Cognizance was taken under Sections 147, 148, 149, 307, 324, 504 I.P.C. and Section 27 of the Arms Act.

4. The learned Senior Counsel for the petitioners submitted that the court below rejected the application filed by the petitioners for discharge without considering the fact that in fact there is no legal evidence for proceeding against the petitioners. Learned Senior Counsel in support of his contention relied upon the decision of the Hon'ble Supreme Court, **A.I.R. 2010 SC 663 (P. Vijayan Vs. State of Kerala and Another)** and submitted that at the stage of Section 227 Cr.P.C. the Judge should not act as a mere post-office to frame the charge at the behest of the prosecution but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into pros and cons of the matter or into weighing and balancing of evidence and probabilities which is really the function of the court after the trial starts.

5. Learned Senior Counsel for the petitioners further

submitted that the Judge while considering the question of framing the charge under Section 227 Cr.P.C. has power to sift and weigh the evidence for the limited purposes of finding out whether or not a prima facie case against the accused has been made out.

6. Perused the F.I.R. According to the F.I.R., the petitioners were also present along with other co-accused persons against whom there is allegation of firing and assault by deadly weapon. Further allegation is that all the accused persons including these petitioners were also armed.

7. So far submission of the learned Senior Counsel for the petitioners that there is no legal evidence is concerned, it is not his case that the informant, who is also injured, has not supported the case of the prosecution. From perusal of the impugned order, it appears that the court below has found that these petitioners were found accompanied with co-accused Munna Singh and Anirudh Singh. They are named. So far the decision relied upon by the learned Senior Counsel is concerned, from perusal of the same it appears that in various paragraphs of the judgment the Hon'ble Supreme Court has narrated the power to be exercised by the Judge at the stage while disposing of the application under Section 227 Cr.P.C. and it has been specifically mentioned that in exercise of the jurisdiction under Section 227 of the Code the Judge which



under the present Code is a senior and experienced court cannot act merely as post-office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. Now, therefore, the decision relied upon by the learned Senior Counsel speaks about the jurisdiction of the Judge while dealing with the application under Section 227 Cr.P.C. and has made clear that if anything has been brought by the accused persons in support of the fact that in fact there is no evidence against them then in such circumstances the Court must not act as a post-office and the Court is expected to deal with the matters brought on record by the accused persons but for the purpose of framing charge the Hon'ble Supreme Court clearly held that the Court is not required to weigh the evidence. Now, therefore, in view of this settled principle of law at this stage i.e. at the stage of framing charge only even if there is strong prima facie case against the petitioners, it is sufficient for framing charge. Admittedly in the present case nothing was brought on record on behalf of the petitioners in support of their case that there is no

legal evidence.

8. As stated above, the F.I.R. itself is clear that the eye witness, who is also injured, has narrated the story and even he is an injured person, therefore, I find no merit in this application and this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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