

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2324 of 2015

Arising Out of PS.Case No. -898 Year- 2011 Thana -SITAMARHI COMPLAINT CASE District-
SITAMARHI

- =====
1. Raghunath Rai son of Late Lattar Rai
 2. Radhey Rai son of Late Latter Rai
 3. Niranjana Rai son of Late Ram Narayan Rai
All resident of village - Gaura, P.S – Nanpur, District - Sitamarhi.
 4. Gaya Rai son of Late Ram Udar Rai, resident of village - Manorathi, P.S- Runni
Saidpur, District - Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Jay Rai son of Ramphal Rai, resident of village - Kauriya, P.S-
Runnisaidpur, District - Sitamarhi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mahendra Thakur, Advocate
: Mr. Sanjay Kumar, Advocate
For the Opposite Party/s : Mr. Shankar Kumar, Advocate
For the State : Mr. Pranav Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-08-2015

Heard learned counsel for the petitioners, learned counsel
for the State and learned counsel for the opposite party no.2.

2. This application under section 482 of the Code of
Criminal Procedure (for short “the Code”) has been filed for quashing
the order dated 17.12.2014 passed by the learned Additional District
and Sessions Judge-III, Sitamarhi in connection with Sessions Trial
No.499 of 2014 arising out of Complaint Case No.898 of 2011
whereby and where under the court below has rejected the petition
dated 20.11.2014 filed by the petitioners under the provisions of

section 227 of the Code.

3. I have heard the parties and perused the record.

4. From perusal of the impugned order, it would appear that the learned Additional Sessions Judge-III, Sitamarhi, has not considered the record of the case. He has rejected the application filed under section 227 of the Code only because after holding enquiry the learned Sub-Divisional Judicial Magistrate, Sitamarhi Sadar found a prima facie case against the accused persons under sections 302, 201 read with 34 and 120B of the Indian Penal Code and the accused persons did not challenge that order. The operative part of the order passed by the court below reads as under:

“Heard both sides and perused the record. From the perusal of the record, it appears that previously the case has been instituted u/s 302, 201/34 I.P.C. against unknown and after investigation, the police submitted final form but on the basis of protest petition, the learned S.D.J.M., Sitamarhi Sadar has inquired into the matter and found the case prima facie true against the aforesaid accused persons u/s. 302, 201/34, 120(B) I.P.C. and the accused persons have not challenged that order in any higher court. Thereafter the case is committed to the court of Session.

It is settled principle of law that charge can be framed even on strong suspicion. Thus, I come to the conclusion that there is no merit in the petition filed by the accused persons on 20.11.14 and as such the same is hereby rejected. Put up on 20.12.14 for framing of charge. Accused persons are directed to be remain physically present in court on the date fixed.”

5. It would be evident from perusal of the impugned order that the learned judge has not exercised his judicial mind to the facts of the case in order to determine whether or not there is sufficient ground for proceeding against the accused persons. At the time of framing of charge, the trial court has to scrupulously scrutinize the materials for its satisfaction whether there is sufficient ground for proceeding against the accused. A judge is not a mere post office to frame charge but has to exercise his judicial mind to the facts of the case at the stage of framing of charge.

6. In that view of the matter, the impugned order dated 17.12.2014 cannot be sustained. Accordingly, the application is allowed. The impugned order dated 17.12.2014 passed the learned Additional District and Sessions Judge-III, Sitamarhi in Sessions Trial No.499 of 2014 is set aside. The matter is remanded to the learned Additional District and Sessions Judge-III, Sitamarhi to consider the application for discharge afresh and pass an appropriate order in accordance with law after taking into consideration the materials available on record.

(Ashwani Kumar Singh, J)

Md.S./-

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