

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19984 of 2015

Arising Out of PS.Case No. -160 Year- 2014 Thana -KORHA District- KATIHAR

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1. Vikash Kumar Sah son of Bhim Narayan Sah resident of Village- Kharsahi Jagta, Police station- Raniganj, District- Araria

2. Dilip prasad Mehta Son of Brahmadeo Prasad Gupta resident of Village- Garia Balua, Police station- Srinagar, District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar

2. Priti Devi wife of Late Vinod kumar chaudhary@Munna Chaudhary resident of Village- Korha, Police Station- Korha, District- Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar, Adv.

For the State : Mr. Sanjay Kumar Tiwary, APP

For Opposite Party No.2 : Mr. Bhola Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-05-2015

Heard learned counsel for the petitioners and learned counsel for the State.

The present application under section 482 of the Code of Criminal Procedure (in short 'the Code') has been filed for quashing the order dated 13th April, 2015 passed by the learned Additional Sessions Judge-V, Katihar in Sessions Trial No. 390 of 2014, arising out of Korha P.S.Case No. 160 of 2014, whereby the application filed under section 227 of the Code for discharge has been dismissed.

The petitioners are named in the First Information



Report registered for the offences punishable under sections 302 read with 34 of the Indian penal Code and 27 of the Arms Act. The informant has alleged that on 3rd September, 2014 at about 10.30 p.m. when her husband Binod Chaudhary came to his house, four persons riding on two motorcycles came and called him. The informant has further alleged that out of them she saw the petitioners and two others to have fired five rounds causing gun shot injury to her husband, as a result of which he died. On conclusion of investigation, the police submitted charge sheet in the case and after taking cognizance of the offence, the matter was committed to the court of Sessions for trial. At the stage of framing of charge, an application under section 227 of the Code was filed, which has been rejected by the court below vide impugned order dated 13th April, 2015.

Learned counsel for the petitioners has submitted that due to dispute existing from before the petitioners have falsely been implicated in this case. Though, there is allegation of indiscriminate firing but the deceased has received only five injuries. He has also submitted that there is no independent witness in this case and the story propounded by the prosecution is highly improbable.

The submissions made by the learned counsel for the petitioners are in the form of defence. At the stage of framing of charge, the probable defence of the accused is not to be considered.

The materials, which are relevant for consideration, are the allegations made in the First Information Report, the statement of the witnesses recorded in course of investigation under section 161(3) of the Code, the documents on which the prosecution relies and the police report submitted under section 173(2) of the Code. The probative value of the defence is to be tested at the stage of trial and not at the stage of framing of charge. It is well settled that at the stage of framing of charge minute scrutiny of the evidence is not to be made. Even on a very strong suspicion charges can be framed. In the present case, in my view, there is enough materials on record to put the petitioners on trial.

In that view of the matter, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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