

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22094 of 2015

Arising Out of PS.Case No. -26 Year- 2008 Thana -DARIYAPUR District- SARAN

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Baleshwar Singh @ Baleshwar Prasad Singh @ Badeshwar Prasad Singh S/o Late Harihar Singh, resident of village + Post - Saraiya, P.S. -Dariyapur, Targhar, Sonpur, District- Saran (Chapra)

.... Petitioner/s

Versus

1. The State of Bihar.
2. Vishwajeet Singh son of Late Rajendra Singh, resident of village + Post Saraiya, P.S.- Dariyapur, District- Saran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Madhav Jha, Advocate

For the Opposite Party/s : Mr. Uday Chandra Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-08-2015

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

2. By way of filing an application under section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 5.12.2015 passed by the learned Additional Sessions Judge-XI, Chapra in Sessions Trial No.895 of 2013 arising out of Dariyapur P.S. Case No.26 of 2008 whereby and where under the court below has dismissed the discharge petition dated 17.10.2014 filed under section 227 of the Code of Criminal Procedure (for short “the Code”) on behalf of the petitioner.

3. The case of prosecution, in brief, according to one Vishwajeet Singh son of Late Rajendra Singh whose fardbeyan was recorded in Emergency Ward of P.M.C.H., Patna by Sub-Inspector of Police, Shri S.K.Yadav, S.H.O., Dariyapur Police Station at 11:20

p.m. on 22.3.2008 is as follows:

(i) On 22.03.2008 at around 11.00 a.m. when he was at Darwaza of his house, his co-villagers namely Pankaj Kumar (2) Niraj Singh, (3) Ajay Singh, S/o Ram Bacchan Singh, (4) Mithilesh Singh, (5) Abhishek Kumar Singh @ Guddu singh (6) Amarnath Singh @ Karu Singh (7) Vidhan Chandra Singh @ Rinkoo Singh (8) Sujay Singh, S/o Ranjit Singh, (9) Ajit singh, (10) Mukesh Singh, (11) Santosh Singh, (12) Binod Singh, (13) Mritunjay Singh, (14) Satyendra Singh, all residents of village Saraiya on occasion of Holi were playing vulgar songs on cassette and dancing on the road just in front of his house.

(ii) That his deceased father Rajendra Singh went and asked them not to play vulgar songs in front of the house as recently death has taken place in his house on which the aforementioned persons started abusing his father and threatened him by saying just wait we will show you.

(iii) That after some time (15) Baleshwar Singh, (Petitioner) (16) Ram Bacchan Singh, (17) Mukesh Singh, (18) Jag Narain Singh @ Ambhu Singh, (19) Ranjit Singh, (20) Ajay Singh, (21) Dhananjay Singh, (22) Rabindra Singh, (23) Nand Kishore Singh, (24) Nawal Kishore Singh, (25) Surya Bali Singh, (26) Raj Kumar Singh, (27) Pappu Kumar Singh, all residents of village Saraiya, P.S. Dariyapur, District Saran variously armed came at his darwaja.

(iv) That Abhishek Kumar Singh @ Guddu Singh was carrying a licensed Double Barrel Gun of his father Baleshwar Singh and the other gun was in the hands of accused Sujay Singh and rest of accused persons were variously armed with dangerous weapons who came at his door and started abusing them.

(v) That on this he (informant), his deceased father Rajendra Singh, and his elder brother Ajit Kumar Singh along with some other family members came out of their house when Baleshwar Singh exhorted by asking his son Abhishek Kumar Singh @ Guddu Singh and others "what are you looking at shoot them". Ram Bacchan Singh was also instigating them.

(vi) That on this Abhishek Kumar Singh @ Guddu Singh and Sujay Singh together fired 7 rounds on his (informant) and his family members in which he (informant), his father and his elder brother sustained injuries and fell down.

(vii) That the other accused persons also started fighting with lathi, stick, bhala and stones & bricks in which Deonath Singh, Sujay Singh S/o Deonath Singh, Raja Kumar Singh (10 years) also received injuries and in pelting of stones and bricks the asbestos roof of the house of one Late Raj Kishore Singh got damaged.

(viii) That on hearing the sound of firing as well as hulla and their cry, his cousin brother Manoj Kumar Singh, Satish Kumar Singh and Mukesh Kumar Singh, all residents of village Saraiya along

with many co-villagers came running on which aforementioned accused persons fled away from there.

(ix) That his cousin brother Manoj Kumar Singh brought him to Dariyapur Hospital on his Motorcycle from where he was referred to P.M.C.H., Patna. His co-villagers and family members brought his deceased father and injured brother to P.M.C.H., Patna where his father Rajendra Singh was declared dead and that they were under treatment. The doctors have told them that post-mortem examination of the deceased will be done in the morning.

4. On the basis of the aforesaid fardbeyan of the informant Vishwajeet Kumar Singh, Dariyapur P.S. Case no.26 of 2008 dated 22.03.2008 was registered against 27 named accused persons including this petitioner under sections 147, 148, 149, 341, 448, 323, 307, 337, 504 and 302 of the Indian Penal Code and Section 27 of the Arms Act.

5. The matter was investigated and in course of investigation statements of the witnesses were recorded under sections 161(3) of the Code. On completion of investigation, a charge-sheet was submitted in which accusation as against the petitioner was found to be true and, as such, he was sent up for trial. The learned Magistrate took cognizance of the offence and committed the case to the court of session for trial. At the stage of framing of charge, an application under section 227 of the Code was filed on behalf of the

petitioner which was dismissed by the trial court vide impugned order dated 5.2.2015.

6. It is contended by the learned counsel for the petitioner that the entire prosecution case is based on erroneous allegation. There is a counter version too. The petitioner happens to be an old person aged about eighty years and has got no criminal antecedent. The licensee DBBL Gun of the petitioner was seized by the police in course of investigation and the expert report would reveal that no firing was made from the said DBBL Gun. On these premises, learned counsel for the petitioner submits that the court below ought to have discharged the petitioner from prosecution in the present case.

7. On the other hand, learned counsel for the State has submitted that the petitioner is named in the first information report. There is allegation against him by the injured informant that on his instruction his son Abhishek Kumar Singh resorted to firing as a result of which father of the informant sustained injury and died in course of treatment at P.M.C.H., Patna.

8. Having heard the parties and perused the record, I find no error in the order passed by the court below. The court below has given clear, cogent and convincing reason for dismissing the application filed under section 227 of the Code filed on behalf of the petitioner. The order impugned would make it evident that several witnesses examined in course of investigation under section 161(3) of

the Code have duly supported the allegations made in the first information report.

9. It is well settled that at the stage of considering an application under section 227 of the Code meticulous analysis of evidence is not to be done. The only thing which is to be seen by the trial court at this stage as to whether or not there is sufficient ground for proceeding against an accused. At this stage, the court possesses a comparatively wider discretion in exercise of which it can determine the question whether the materials on record, if not rebutted, is such on the basis of which charge could be framed. The probative value of the materials on record cannot be gone into by the trial court at this stage.

10. In that view of the matter, I find no merit in this application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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