

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 36427 of 2012

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1. Budhdeo Yadav @ Budhnath Yadav, Son of Late Ram Devan Yadav
 2. Raj Kumar Yadav @ Raj Kumar, S/o Budhdeo Yadav
- Both are residents of village – Painapur, P.S. – Bikram, District - Patna

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioners : Mr. S. D. Yadav, Advocate
For the Informant : Mr. Ram Naresh Sharma, Advocate
For the State : Mr. Suresh Prasad Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

8 24-06-2015 Heard learned counsel for the petitioners, the informant and the State.

This is a petition for quashing the order dated 31.03.2012 passed by the learned Additional Sessions Judge-IV, Danapur in S. Tr. No. 1562 of 2011 arising out of Bikram P.S. Case No. 07 of 2011 by which the prayer for discharging the petitioners under Section 227 of the Code of Criminal Procedure has been rejected.

The prosecution case as alleged in the First Information Report by the informant is that she resides in her house at village Sahjahanpur Police Station Bikram district Patna along with his domestic servant Rajesh Kumar. Her husband and father-in-law are presently lodged in Adarsh Central Jail, Beur and



other family members live at Patna. On 10.01.2011, she was sleeping in her house, her servant was sleeping in a room outside the house. At about 11:30 P.M. her servant called to open the door. She saw that accused Jai Kumar, Raj Kumar and Pintu Kumar were pointing pistol at the ear-pit of his domestic servant and pointing pistol upon her they asked to open the door and she will be shot if she raise alarm. She opened the door then 10-12 persons armed with gun and pistol entered into her house in which father-in-law of Jai Kumar Singh, namely, Baban Singh was amongst them, others were not identified by her, due to fear she went to her room, opened their almirah then they took away licensee rifle issued in the name of her father-in-law with 75 round live cartridges, golden ornaments and cash of Rs.3,000/- thereafter they brought her on the ground floor, tied her hands and tried to commit rape. Her domestic servant Rajesh Kumar protested then they dragged him towards drawing room and shot fire upon him as a result of which he died. Thereafter the accused persons fled away with articles. Reason behind the occurrence has been disclosed that the accused persons had tried to commit murder of her husband and father-in-law in which their brother died and due to this reason present occurrence was caused.

On the basis of the fardbeyan of the informant First

Information Report was lodged and police after investigation submitted charge-sheet.

However, the informant herself was an accused in the charge-sheet along with others including the petitioners. On the basis of the charge-sheet cognizance has been taken. A petition under Section 227 of the Cr.P.C. has been filed for discharge which was rejected by the learned trial Court.

The argument advanced by the learned counsel for the petitioners is that the petitioners are the father and son and except confessional statement of the co-accused Ram Ratan Yadav and Raj Kumar Yadav before the police there is no other evidence which is not admissible in evidence under Section 25 of the Evidence Act and hence, there is no ground to frame a charge and petitioners were required to be discharged under Section 25 of the Evidence Act.

However, the trial Court rejected the petition on the ground that from perusal of the case diary several conversations in between the accused persons through mobile phone are mentioned and there appears to be sufficient materials and hence, held that the prayer for discharge is not maintainable and lacks merit.

Learned counsel for the petitioners has challenged the order of 4th Additional Sessions Judge, Danapur on the ground that



except the confessional statement there is no iota of evidence and the learned trial Court while rejecting the petition has made vague assertion that there is sufficient material but has not mentioned that what are those sufficient materials on the basis of which the learned trial Court has rejected the petition for discharge.

Learned counsel for the petitioners, however, relied upon a decision in the case of reported in **1977 BBCJ 389 Panna Lal Sah @ Pana Lal Saraf Vrs. The State of Bihar** in which it has been held that statement made to the police by an accused is not admissible in evidence. It has been asserted that even if a person is not an accused and makes a statement is not admissible in evidence and has subsequently been implicated in the case as an accused. It has further been asserted that the only evidence against the petitioners is the statement of co-accused in paragraph 123 of the case diary of Ram Ratan Yadav as well as Raj Kumar Yadav the petitioners.

Section 25 of the Evidence Act in unqualified term states that the confession made before the police is not admissible in evidence and this preposition has well been settled in the case of reported in **AIR 1966 SC 119 Aghnoo Nagesia v. State of Bihar**. However, the trial Court has not disputed this fact but has rejected the petition on the ground that there are conversations on

mobile amongst the accused persons and further there is other material. However, there is neither any material about the conversations of the accused persons nor it has been mentioned that what are the other materials and the order passed is quite vague without due application of mind. Hence, there is no mention about the implication of these petitioners nor there is any whisper against these petitioners that they were engaged in the conversations. Hence, the order impugned dated 31.03.2012 passed by the learned 4th Additional Sessions Judge, Danapur in S. Tr. No. 1562 of 2011 arising out of Bikram P.S. Case No. 07 of 2011 is not sustainable and is hereby set aside as the impugned order is quite vague with regard to the implication of the petitioners without any mention that what materials are against the petitioners showing them the accused.

This petition is, accordingly, allowed.

(Gopal Prasad, J.)

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