

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12300 of 2013

Arising Out of PS.Case No. -74 Year- 2011 Thana -SUPAUL District- -

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Surendra Pandey & Anr.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Dr. Rabindra Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 02-07-2015

Heard learned counsel Mr. Shekhar Kumar Singh for the petitioners and learned A.P.P. Mr. Chandra Bhushan Prasad for the State of Bihar.

2. This criminal miscellaneous application has been filed by two co-accused persons for quashing the order dated 23.01.2013 passed by the learned Ad-hoc Additional Sessions Judge-III, Supaul in connection with Sessions Trial No.178 of 2012 arising out of Supaul P.S. Case No.74 of 2011 whereby the court below rejected the application filed by the petitioners under Section 227 Cr.P.C. for their discharge.

3. It appears that the informant Kanhaiya Prasad Chand gave his fardbeyan on 25.02.2011 at 7.30 A.M. alleging that in the night Kedar Narayan Singh informed him that his brother Dadan Chand had been stabbed by Chhura (knife) and was thrown by the



side of his house. The informant went there and brother of the informant told him that Arun Singh had stabbed him with knife in his abdomen. He took him to the hospital wherefrom he was referred to the clinic of Dr. B.K. Yadav but on the way he died. On the basis of the fardbeyan, investigation was made. The various witnesses during investigation named the present petitioners also. The investigating officer however filed final form but the magistrate differing with the final form considering the materials took cognizance against these petitioners also including the named F.I.R. accused Arun Singh against whom charge sheet was submitted.

4. The case was committed to the Court of Sessions and at the time of framing charge the application was filed by the petitioners for discharge. By the impugned order the court below has rejected the said application.

5. The learned counsel submitted that just before the death of the deceased (brother of the informant) had named only the co-accused Arun Singh, who stabbed him with Chhura/Chaku. After twenty days the wife of the deceased and the mother of the deceased had named these petitioners, therefore, the prosecution case is doubtful and that in fact because of land dispute between these petitioners they have involved these petitioners in the case.



They are not the eye-witnesses to the occurrence according to the F.I.R. According to the informant, who is brother of the deceased, the deceased had disclosed him only one name i.e. the name of co-accused Arun Singh whereas these two witnesses whose statements have been recorded under Section 164 Cr.P.C. have stated that when they came to the deceased, the deceased also named these two accused persons who had taken part in assaulting him. According to the learned counsel, this statement of two witnesses cannot be relied upon, particularly when the statement made by the informant in the F.I.R. is only against one co-accused Arun Singh.

6. On the other hand, the learned A.P.P. objected the prayer for quashing the order and submitted that these two witnesses have specifically named these petitioners also and according to the mother of deceased, who has been examined under Section 164 Cr.P.C. which has been recorded in paragraph 42 in the case-diary, clearly stated that the deceased disclosed the name of these petitioners also who have assaulted him. Therefore, the court below has rightly rejected the application for discharge filed by the petitioners.

7. Perused the order passed by the court below.

8. From perusal of the impugned order, it appears that

the court below has not only considered the statements of the wife of the deceased recorded at paragraph 41 of the case-diary, the mother of the deceased recorded at paragraph 42 of the case-diary but also has considered the statements of other witnesses at paragraphs 48, 52 and 53 and then came to the conclusion that there are sufficient materials to proceed against the petitioners.

9. At the time of hearing of this application the learned counsel placed the evidence of the witnesses, whose statements have been recorded in paragraphs 48, 52 and 53 also. Out of the above paragraphs, two of the witnesses i.e. evidence of Kameshwar Mishra and the evidence of Nandani Kumari has been placed in extenso. They have stated that they had seen the present petitioners along with other co-accused persons including the co-accused Arun Singh taking the deceased for drinking wine. The court below considering these materials came to the conclusion that for framing charge prima facie materials are available on the case-diary.

10. So far the submission of the learned counsel for the petitioners that in the F.I.R. only the name of the co-accused Arun Singh has been mentioned by the informant, who is also the brother of the deceased, after twenty days the case has been developed by the mother, wife and daughter of the deceased is

concerned, it may be stated that even if the argument of the learned counsel is accepted then also it will only indicate that there is contradiction in the F.I.R. and in the statements of the witnesses. Whose version is to be accepted or whether both versions are to be accepted or whether along with the statements of the informant, the statements of the witnesses are also to be relied upon or not is a matter to be seen by the trial court at the time of trial.

11. The Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. K.M. Sharan, (2008) 4 SCC 471** has held that at the stage under Section 482 Cr.P.C. the High Court is not called upon to embark upon an inquiry whether the allegations in the F.I.R. and in the charge sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the court concerned after the entire material is produced before it on a thorough investigation and evidence is led. The High Court is only required to examine whether the allegations made in the F.I.R. and in the charge sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the respondent or not.

12. Therefore, now in exercise of jurisdiction under

Section 482 Cr.P.C. this court cannot say that the evidences of witnesses (mother, widow and daughter of the deceased examined by the prosecution), which have been recorded in paragraphs 42, 48 , 52 and 53, are inadmissible evidence and, therefore, on the basis of F.I.R. only the case should be decided and since the F.I.R. is against only one accused, the petitioners should be discharged.

13. In such circumstances, I find no merit in this application and, therefore, this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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