

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3609 of 2016

Arising Out of PS.Case No. -51 Year- 2012 Thana -RAJPUR District- BUXAR

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1. Manish Kumar Rai @ Sachchu Rai Son of Sri Bishnu Swaroop Rai
2. Bishnu Swaroop Rai @ Munmun Rai, son of Sri Ramesh Chandra Rai,
Both residents of village- Rampur, P.S.- Rajpur in the district of Buxar,
presently residing at Madan Ji Ka Hata, Pakari, P.S.- Ara Nawadah in the
district of Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri Prakash Rai, son of Late Shiv Narayan Rai, resident of village-
Rampur, P.S.- Rajpur in the district of Buxar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pd. Singh, Sr. Adv.
Mrs. Anita Kumar Singh, -Advocate
Mr. Amit Anunay -Advocate
For O.P. No.2: Mr. Mrityunjay Kumar -Advocate
For the Opposite Party/s : Mr. Parmeshwar Mehta (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 01-08-2016 Heard learned counsel for the petitioners, learned
APP as well as learned counsel for O.P. No.2.

2. Learned counsel for the petitioner has submitted
that the parties who are own *pattidars* are litigating on account of
land dispute and for that Civil Suits are pending, having been
annexure of the petition. It has also submitted that late Sidhnath
Rai who was renowned Advocate of Bhojpur District, at his fag
end of his life gifted certain properties to the petitioners after
having been pleased with service rendered by them which has
caused annoyance to their pattidars and on account thereof, only to
humiliate as well as coerce the petitioners to give up their claims

on the basis of aforesaid gift in their favour, filed the instant case levelling false and frivolous allegation.

3. Therefore, submission is that malicious prosecution should not be patronized. It has also been submitted that the plea of malicious prosecution could be raised at the stage of framing of charge also which, the learned lower court wrongly and illegally rejected. So submitted that in the aforesaid background, petitioners should be discharged by getting the order impugned set aside. In support of his submission, learned counsel for the petitioner also cited *PLJR 2004(2) 20, PLJR 1991(2) 315*.

4. At the other end, learned APP assisted by learned counsel for O.P. No.2 has submitted that at the present moment, learned lower court has only to see whether the materials available on record make the charge groundless and if so, then and then only, discharge would be effected. It has also been submitted that from the order impugned, it is evident that learned lower court had gone through the materials having been collected during course of investigation and further, on the basis thereof, did not find the charge to be groundless. Consequent thereupon, rejected the petition.

5. In *Amit Kapoor v. Ramesh Chander* as reported in *(2012)9 SCC 460*, it has been held:-



17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for exercise of such jurisdiction. It may even be weaker than a *prima facie* case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

6. Recently, in *Sonu Gupta v. Deepak Gupta* as reported in **2015(2) PLJR 321(SC)** it has been held as follows:-

It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of *prima facie* case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court



finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.

Even the decisions cited on behalf of petitioners also reiterated the said principle.

7. From the material having been perceived by the learned lower court as incorporated in the order impugned, it satisfies the ingredients so laid down by the Hon’ble Apex Court as referred above and consequent thereupon, the instant petition happens to be devoid of merit and is accordingly, rejected.

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(Aditya Kumar Trivedi, J)

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