

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8356 of 2015

Arising Out of PS.Case No. -18 Year- 2008 Thana -BIRAUL District- DARBHANGA

- =====
1. Gopal Mukhiya, Son of Raj Narayan Mukhiya
 2. Nand Kumar Mukhiya, Son of Mana Mukhiya
 3. Amala Devi, Wife of Gopal Mukhiya

All are resident of village - Changwara, Tola Afjala, P.S. - Biraul, District - Darbhanga. Petitioners

Versus

1. The State of Bihar
2. Tetari Devi Wife of Fulo Mukhiya, Resident of Village - Changwara Tola, Afjala, P.S. - Biraul, District - Darbhanga.

.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ravi Ranjan, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-01-2016

By the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 05.12.2014 passed by the learned Additional Sessions Judge-II, Benipur, Darbhanga in Sessions Trial No. 223 of 2011 arising out of Complaint Case No. 341 of 2008 by which the application seeking discharge from the case has been rejected.

It would be apparent from perusal of the impugned order that the witnesses examined in course of inquiry and pre-charge stage have fully supported the prosecution case that the

petitioners set the house of the complainant on fire.

Upon consideration of the record of the case and after hearing the submissions of the accused and the prosecution, the trial Judge has come to a finding that there is sufficient ground for proceeding against the accused. From the impugned order, it would be evident that apart from the complainant, the witnesses, namely, Phool Mukhiya, Baijnath Mukhiya and Jiv Mukhiya have supported the case of the complainant in their deposition.

Learned counsel for the petitioner has contended that initially an FIR was registered and upon due investigation, the investigating officer found the allegation to be false and hence, in report submitted under Section 173 of the Code of Criminal Procedure, the petitioners were not sent up for trial. As the informant of the case had filed a protest petition during pendency of the investigation, while accepting the police report, the learned Magistrate directed the protest petition to be registered as complaint pursuant to which, the complaint case was registered and inquiry under Section 202 of the Code of Criminal Procedure was conducted. It has been contended that the witnesses examined during inquiry as also during pre-charge stage are all tutored witnesses and they have not deposed the correct facts before the court. The evidences adduced by them are wholly unreliable. On

these submissions learned counsel for the petitioners has submitted that the impugned order dated 05.12.2014 is erroneous as while passing the order the trial Judge has failed to take into consideration the materials collected by the police during investigation of the case.

Per contra, learned counsel for the State has contended that the sufficiency or reliability of the evidence is not to be considered at the stage of framing of charge. The credibility of the evidence can only be considered at the stage of argument when the witnesses are subjected to cross-examination after framing of charge. He has further contended that while passing the order on an application for discharge in a complaint case, the trial Judge could not have looked into the materials collected by the police during investigation.

I have heard respective counsel for the parties and perused the record. I find substance in the arguments advanced by the learned counsel for the State. The standard of test which is to be finally applied before recording a finding regarding guilt or innocence of the accused is not exactly to be applied at the stage of consideration of discharge application. Furthermore, the trial Judge was debarred from looking into the materials collected during police investigation at the stage of consideration of an application

for discharge as the case was proceeding on a complaint. There is no illegality in the order passed by the court below.

Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

U		T	
---	--	---	--