

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27259 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

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1. Sushil Mishra son of Late Lakshmi Kant Mishra
2. Vivek Kumar Mishra son of Sushil Mishra
Both are Resident Of Village- Dhanga, P.S.- Nauhatta, District- Saharsa

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gobind Mishra s/o Late Gunanand Mishra Resident Of Village- Dhanga, P.S.-
Nauhatta, District- Saharsa

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra
For the Opposite Party/s : Mr. Damodar Prasad Tiwary, A.P.P.
Mr. Pramod Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 14-07-2016

Heard learned counsel for the petitioners , Sri Damodar Prasad Tiwary, learned A.P.P. as well as Sri Pramod Kumar Sinha, learned counsel, who has appeared on behalf of the complainant / informant -opposite party no. 2 on notice.

Two petitioners, have approached this court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 10.9.2012 passed in Sessions Trial No. 221 of 2011 (arising out of Nauhatta P.S. Case No. 101 of 2007) registered for the offence under section 302/ 201/ 120(B)/ 34 of the Indian Penal Code. By the said order petition filed

on behalf of the petitioners and other co -accused persons for their discharge was rejected.

At the very outset , learned counsel for the petitioners by way of referring to Annexure – ‘4’ i.e. order dated 26.2.2015 passed in Cr. Misc. 37871 of 2012 submits that by the common impugned order discharge petitions filed on behalf of petitioners and co-accused Chandra Bhushan Jha was rejected. The co-accused Chandra Bhushan Jha had earlier approached this Court vide Cr. Misc. No. 37871 of 2012 and this court after summoning case diary and examining the material available on record recorded a definite finding that there was no material to even presume commission of offence by the accused person and quashed the impugned order so far as co- accused Chandra Bhushan Jha is concerned. He submits that whatever allegation has been levelled against the petitioners, same allegation was levelled against the co-accused Chandra Bhushan Jha and as such, petitioners are entitled to get the same relief.

It is the case of the petitioner that death of son of the informant had occurred due to accident which occurred on 18.9.2007. The dead body of the deceased was received on 19.9.2007 from hospital and subsequently it was cremated. The dead body was received on 19.9.2007 whereas complaint was filed on 15.10.2007



vide Complaint Case No. 1611 C of 2007 in the court of Chief Judicial Magistrate, Saharsa. The said complaint was referred to police for its registration under section 156(3) of the Cr.P.C. and thereafter F.I.R. vide Nauhatta P.S. Case No. 101 of 2007 was registered for the offence under section 302/ 201/ 120(B) / 34 of the Indian Penal Code. During investigation accusation was found untrue and thereafter police submitted final report exonerating all the accused persons. However, the learned Chief Judicial Magistrate differing with the police report took cognizance of offence vide its order dated 3.8.2010 . Subsequently after completion of supply of police paper the case was committed to the court of sessions and at the stage of charge petition was filed for discharge on behalf of both the petitioners and the other co -accused Chandra Bhushan Jha. The learned Adhoc Additional Sessions Judge -II , Saharsa by the impugned order i.e. order dated 10.9.2012 dismissed discharge petitions filed by all the accused persons. It has been argued by learned counsel for the petitioners that there was no material in the case diary even to draw inference regarding commission of offence by the petitioners. However, the learned court below without application of mind rejected the same. It has been argued that the co-accused Chandra Bhushan Jha filed a quashing application against the same order, which was quashed by this court on 26.2.2015 vide

Cr. Misc. No. 37871 of 2012. According to learned counsel for the petitioners the petitioners deserve the same relief due to the reason that there was no separate accusation or other accusation against the petitioners than the allegation against the co -accused Chandra Bhushan Jha.

Sri Pramod Kumar Sinha, learned counsel for the informant, has vehemently opposed the prayer of the petitioners. He submits that in the case diary there were material to suggest commission of offences. He submits that the learned court below has rightly rejected the petition. He has argued that even in a case where there is material to draw an inference regarding commission of offence, it can be said to be prima facie case sufficient for framing of charge. However, he was not in a position to distinguish the case of petitioners with the co -accused Chandra Bhushan Jha. He fairly concedes that against the order passed in Cr. Misc. No. 37871 of 2012 no appeal has been preferred.

In view of the facts and circumstances particularly the fact that in the complaint petition there is no distinction of accusation in respect of petitioners and co -accused Chandra Bhushan Jha and from perusal of the order dated 26.2.2015 it is evident that while quashing the order in respect of co-accused Chandra Bhushan Jha this court had examined the case diary and thereafter by a detailed order quashed

the impugned order i.e. order dated 10.9.2012 so far as co- accused Chandra Bhushan Jha is concerned and since there is no distinction regarding accusation in respect of the petitioners and co- accused Chandra Bhushan Jha as well as the fact that no appeal has been preferred against the order dated 26.2.2015 passed in Cr. Misc. No. 37871 of 2012 certainly the order impugned so far as both the petitioners are concerned is also liable to be set aside. Accordingly, the order dated 10.9.2012 passed in Sessions Trial No. 221 of 2011 so far both the petitioners is concerned is hereby set aside.

The petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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