

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29195 of 2014

Arising Out of PS.Case No. -21 Year- 2013 Thana -BELA District- SITAMARHI

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1. Punit Sahni
2. Upendra Sahni
Boh are sons of Nigar Sahni
3. Naga Sahni, s/o Ram Swarup Sahni
4. Lalit Sahni
5. Suresh Sahni
4 and 5 are sons of Kishun Sahni
All are residents of vill-Lakshmipur, PS- Bela, Dist-Sitamarhi
..... Petitioners

Versus

The State of Bihar
..... Opposite Party

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Appearance :

For the Petitioners : Mr. Prabhat Kumar, Advocate
For the Opposite Party : Mr. Sharda Kumari (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 01-09-2016 Heard learned counsel for the petitioner as well as learned Addl.P.P.

2. Petitioners are aggrieved by order dated 02.04.2014 passed by Addl. Sessions Judge-II, Sitamarhi in Sessions Trial no. 328/2013/194/2013 whereby and whereunder prayer having so made on behalf of petitioner under Section 227 of the Code of Criminal Procedure has been rejected.

3. It has been submitted on behalf of petitioners that there happens to be no legal evidence

collected during the course of investigation against them and so, there happens to be absence of even prima facie case. That being so, the order impugned is found unsubstantiated whereupon, is fit to be set aside.

4. Learned Addl.P.P. opposed the prayer and submitted that after perusal of the order impugned, it is evident that learned Lower Court, after perceiving the materials having available on the record, found sufficient to proceed with trial against the accused by way of framing of charge and so, the prayer of the petitioners is found not at all entertainable.

5. So far principle relating to consideration of materials by the Court at the stage of discharge/ charge happens to be a debatable matter since long. In ***Amit Kapoor v. Ramesh Chander (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 the 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. In the aforesaid background when the facts of the case are being considered, it is evident that in the background of illicit relationship in between daughter of Naga Sahni and the deceased, the event has been perceived which has been corroborated by the witnesses whose presence the order impugned suggests and on account thereof, for the present having supported with inculpatory extrajudicial confessional statement of Lalit Sahni, is found sufficient for framing of charge whereupon instant petition lacks merit and is accordingly rejected.

(Aditya Kumar Trivedi, J.)

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