

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25722 of 2013

Arising Out of PS.Case No. -11 Year- 2012 Thana -MUFFASIL District- AURANGABAD

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1. Ramdehyan Singh @ Ram Dhyan Singh S/O Late Deo Sharan Singh
Resident Of Village- Bela Karma, P.S.- Aurangabad (M), District-
Aurangabad. Petitioner/s

Versus

1. The State Of Bihar
2. Ravi Ranjan Kumar Singh S/O Sharwan Singh Resident Of Village-
Jokbahar, P.S.- Simdega, District- Simdega (Jharkhand), At Present
Resident Of Village- Bela Karma, P.S.- Aurangabad (M), District-
Aurangabad. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Krishna Pd. Singh, Sr. –Advocate
Mr. Mithilesh Kr. Singh. -Advocate
For the Opposite Party/s : Mr. Parmanand Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 18-07-2016 Heard learned counsel for the petitioner as well as

learned APP.

2. Petitioner/accused has challenged the order dated

12.03.2013 passed by Additional Sessions Judge-IV, Aurangabad

in connection with Sessions Trial Nos.

360/2012/215/2012/251/2012 whereby and whereunder the

learned lower court rejected the prayer made on behalf of

petitioner/accused under Section 227 of the Cr.P.C. Section 227 of

the Cr.P.C. reads as follows:-

227. Discharge –

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.



3. Therefore, from plain reading of Section 227 of the Cr.P.C, it is evident that the Court has to consider after taking into account all the materials available on the record coupled with hearing the submissions on behalf of accused, paucity of the material, that means to say, the materials whatever collected during course of investigation and available on the record did not make out sufficient ground to proceed with the trial, the Court will discharge the accused. Mode of consideration has been explained times without number by the Hon'ble Apex Court under different judicial pronouncements and more recently, in the case of ***Sonu Gupta v. Deepak Gupta*** as reported in ***2015(2)PLJR SC 321***, it has been held under para-8 which is 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.

4. Now coming to the facts of the case, from the Fard-e-beyan, it is evident that informant is not an eyewitness to the occurrence. He has stated that on 18.01.2012 while his mother proceeded towards market at about 4:00 P.M., he came to know that his mother has been shot at and her dead body has been thrown in a barren land near Chakrapur. He rushed and found his mother dead having gun shot injury. He showed his suspicion against the accused including the petitioner suggesting that they might have committed murder in the background of family feud.

5. From perusal of the case diary, it is evident that witnesses who have been examined have simply reiterated the narration including further statement of the informant. From perusal of the order impugned, it is evident that the learned lower court failed to consider whether the material available on the record was sufficient and for that, at least should have opined so. The order impugned, as it appears, suffers from vagueness. That being so, the order impugned is set aside. Petition is allowed.

6. The matter is remitted to the learned lower court to consider afresh in the background of principle so laid down by the Hon'ble Apex Court as referred hereinabove.

(Aditya Kumar Trivedi, J)

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