

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21256 of 2013

Arising Out of PS.Case No. -73 Year- 2005 Thana -GAMAHARIYA District- MADHEPURA

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1. Shashidhar Mallick S/O Late Ram Narayan Mallick Resident Of Village/
P.S.- Pratapganj, Dist.- Supaul
 2. Md. Safique Alam S/O Late Akhtar Hussain Resident Of Village- Kajra,
P.S.- Shankarpur, District- Madhepura

.... Petitioner/s

Versus

1. The State Of Bihar
2. Suresh Kumar Mandal son of Sri Ganga Ram Mandal Resident of
Village-Dular, PS-Gamharia, Distt-Madhepura.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nifisuzzoha, Advocate

For the Opposite Party/s : Mr. Parmeshwar Mehta, (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

5 24-08-2016 Heard learned counsel for the petitioners as well as
learned APP for the State.

2. Petitioners, who are accused in Gamhariya PS Case
No. 73/2005 pending before Sri Avinash Kumar, Judicial
Magistrate-1st Class, Madhepura are aggrieved by an order dated
12.03.2013 whereby their prayer under Section 239 Cr.P.C. has
been rejected.

3. It has been submitted on behalf of petitioners that
petitioner no.1, Shashidhar Mallick happens to be Incharge
Principal and on account thereof, he has been *malafidely*
implicated by the informant, Chairman of Vidyalaya Shiksha
Samiti when he declined to come in toe. It has further been
submitted that with regard to petitioner no.2, Md. Shafique Alam,

there happens to be no allegation attributed in the written report. And that being so, at least, petitioner no.2 should have been discharged by the learned lower court.

4. Learned APP opposed the prayer and submitted that the learned lower court had opined in the background of materials having been collected during course of investigation followed with taking cognizance under Sections 420, 406, 120B, 34 of the IPC that a *prima facie* case exists for framing of charge whereupon rightly rejected the prayer.

5. At the stage of framing of charge relating to warrant trial on a police report, Sections 239 and 240 of the Cr.P.C. are relevant Sections which govern the same. Section 239 speaks with regard to discharge of an accused and for that, the Court has to see whether the materials having been available before the Court in terms of Section 173 of the Cr.P.C does speak with regard to charge being groundless. That means to say, whatever assertions and allegations happen to be, those are found unsubstantiated from those materials for framing of charge, contrary to it, the Magistrate is to proceed in terms of Section 240 Cr.P.C. whereunder charge has to be framed.

6. Consideration of material is within the exclusive domain of the Magistrate. Such consideration has been subject to



adjudication by the Hon'ble Apex Court times without number and further, it has been perceived that it should be less than a *prima facie* case whereupon strong suspicion has been found justifiable for rejection of the prayer in terms of Section 239 Cr.P.C, simultaneously, framing of charge under Section 240 of the Cr.P.C.

7. Now coming to the merit of the case, it is evident that so many instances have been incorporated whereunder the accused persons indulged in criminal activities whereupon investigation followed and concluded by way of submission of charge-sheet. During course thereof, the material having been collected during course of investigation has been submitted in accordance with Section 173 Cr.P.C.

8. In the aforesaid background, if the facts of the case are considered, then in that event, it would suggest that all the teachers are responsible for disbursement of midday meal and some sort of defalcation, during course thereof, is indicative of the fact that all the teachers have got hand in gloves to digest the government exchequer by such activity and for that, their pre-meeting of mind would not be ruled out. Furthermore, withdrawal of other amounts under different heads is also apparent which would not have facilitated had there been no common intention as

well as pre-meeting of mind. Detailed discussions thereof will adversely affect the interest of the petitioner during course of trial, on account thereof, is forbidden.

9. Accordingly, the instant petition is found devoid of merit and the same stands rejected.

10. After going through the report of learned lower court, it is apparent that at one pretext or the other, petitioners have lingered the stage for framing of charge for three consecutive dates and that being so, learned lower court is warned to be rigid and firm while discharging the duty. Allowing a petition under Section 317 Cr.P.C. halting the further development of trial happens to be a form of dereliction of duty.

(Aditya Kumar Trivedi, J)

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