

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51263 of 2015

Arising Out of PS.Case No. -246 Year- 2012 Thana -GOPALPUR District- GOPALGANJ

1. Chandraket Mishra @ Chandraketu Mishra
2. Chandra Bhushan Mishra @ Chandra Bhushan Tiwari @ Chandra Bhushan Misir. Both are sons of Late Vyas Mishra, resident of village- Sujanpur, P.S.- Gopalpur, District- Gopalganj

.... Petitioners

Versus

1. The State of Bihar
2. Guli Chaudhary, son of Late Shuki Chaudhary, resident of village- Sujanpur, P.S.- Gopalpur, District- Gopalganj.

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Dubey, Advocate
For the Opposite Party/s : Mr. Ram Chandra Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-05-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the order dated 20th August, 2015 passed in Sessions Trial No. 68 of 2015 arising out of Gopalpur P.S. Case No. 246 of 2012 passed by the learned 2nd Additional Sessions Judge, Gopalganj by which he has rejected the application preferred on behalf of the petitioners under Section 227 of the Code of Criminal Procedure for discharge from the case.

The petitioners were made named accused in the aforesaid Gopalpur P.S. Case No. 246 of 2012 registered under

Sections 307, 323, 341, 504/34 and 302 of the Indian Penal Code.

The Police investigated the case and on completion of investigation, accusations against the petitioners were found to be true. Accordingly, they were sent up for trial and the learned Magistrate after perusing the Police report submitted under Section 173(2) of the Code of Criminal Procedure took cognizance of the offence and after complying with the provisions prescribed under Section 207 of the Code of Criminal Procedure, the case was committed to the Court of Sessions for trial. At the stage of framing of charge, the petitioners preferred an application under Section 227 of the Code of Criminal Procedure seeking discharge, which has been rejected by the Trial Court vide order dated 20.08.2015. The aforesaid order is under challenge in the present application.

Learned counsel appearing for the petitioners has submitted that the petitioners were falsely implicated in the case by the informant of the case out of the enmity existing between the parties from before. They were not present at the place of occurrence on the date on which the incident took place.

Be that as it may, these are questions of fact. A plea of alibi cannot be made a ground for seeking discharge by an accused in a criminal case, which has been instituted for a serious offence under Section 302 of the Indian Penal Code. The plea of alibi has to be seen

by the Police during investigation. The Investigating Officer has found the culpability of the petitioner in the alleged offence.

In that view of the matter, simply on oral assertion of the petitioners that they were not present at the place of occurrence on the date on which the incident took place, they cannot be discharged.

In that view of the matter, I find no error in the impugned order passed by the court below. Accordingly, the present application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

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