

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30681 of 2014

Arising Out of PS.Case No. -124 Year- 2002 Thana -PANCHRUKHI District- SIWAN

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MD. DARUD MIAN @ DAUD MIAN @ DAROOD S/O LATE ISHA
MOHAMMAD @ DOST MOHAMMAD RESIDENT OF VILLAGE -
VAISHAKHI, P.S. PACHRUKHI, DISTRICT – SIWAN.

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Rajkumar Rajesh, Adv.

Mr. Girish Chandra, Adv.

For the Opposite Party/s : Mr. Ashok Kr. Singh No.1, (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 16-09-2016

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner, who happens to be an accused of
Sessions Trial No.247/2013 pending before Additional Sessions
Judge, IInd, Siwan is aggrieved by an order dated 28.02.2014
whereby and whereunder prayer having made on behalf of
petitioner under Section 227 of the Cr.P.C. has been rejected.

It has been submitted on behalf of petitioner that
the order impugned happens to be contrary to the spirit of law
and further, the learned lower court misconstrued as well as
misdirected itself from the settled principle of law while
adjudicating upon the prayer of the petitioner followed with its
rejection. To substantiate the same, it has been submitted that
right from fardbeyan, the informant who happens to be an
injured had not alleged that petitioner happens to be his
assailant. From the order impugned, it is also apparent that

none of the witnesses have alleged that petitioner happens to be an assailant. So, neither there happens to be direct evidence nor circumstantial evidence to suggest complicity of the petitioner during course of commission of the alleged and that being so, the learned lower court instead of rejecting the prayer of the petitioner should have allowed the same.

It has also been submitted that the motive for false implication is itself found exposed in the fardbeyan to the effect that both the parties are on litigating term on account of land dispute.

Refuting the submission made on behalf of petitioner, it has been submitted at the end of the learned Additional Public Prosecutor that at the present moment meticulous examination of the material is not permissible.

Mode of consideration of the materials at the stage of the framing of charge have been explained by the Hon'ble Apex Court times without number. In paragraph-17 of ***Amit Kapoor vs. Ramesh Chander & Anr.*** reported in **(2012) 9 SCC 460**, it has been held that during course of consideration of materials at the stage of framing of charge, it should be weaker than a prima facie case. Subsequently, in ***Sonu Gupta Vs. Deepak Gupta*** reported in **2015(2) PLJR 321 (SC)**, it has been held:

“8. 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.”

Now, the materials having been available before the learned lower court is to be perceived in the background of the aforesaid principle as enunciated by the Hon’ble Apex Court. As soon as firing was made, the informant along with his sons awaken and found the petitioner along with co-accused fleeing from the Darwaja of the prosecution party. The occurrence had taken place at dead of night. Prosecution party chased them but they manage their escape. At least such activity suggests grave suspicion whereupon the learned lower court had rightly rejected the prayer of the petitioner.

As such, I do not see any cogent reason to interfere with the order impugned. Consequent thereupon, instant petition is rejected.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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