

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50821 of 2015

Arising Out of PS.Case No. -63 Year- 2008 Thana -GHORASAHAN District-
EASTCHAMPARAN(MOTIHARI)

=====

Pawan Singh @ Pawan Kumar Singh spn of Bindehwar Singh, resident of village-
Mathiya Bhopat (Fulwar), P.S.- Lakhaura, District- East Chmaparan.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh. Advocate

For the State : Mr. Ajay Kumar 1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-06-2016

Heard learned counsel for the petitioner and learned counsel
for the State.

2. By way of the present application preferred under
Section 482 of the Code of Criminal Procedure (for short 'CrPC), the
petitioner seeks quashing of the order dated 23.9.2015 passed in
Sessions Trial No.299 of 2015 arising out of Ghorasahan (Lakhaura)
P.S. Case No.63 of 2008 whereby the learned Additional Sessions
Judge-IV, East Champaran, Motihari, has dismissed the application
for discharge filed under Section 227 of the CrPC on behalf of the
petitioner and fixed the matter on 9.10.2015 for framing of charges.

3. Admittedly, on the basis of statement of Gautam Kumar
Singh, Ghorasahan (Lakhaura) P.S. Case No.63 of 2008 was



registered against unknown accused person under Sections 302/34 and 201/34 of the Indian Penal Code on 23rd April, 2008. On completion of investigation, the police submitted report under Section 173(2) of the CrPC before the Magistrate pursuant to which cognizance was taken against the petitioner by the jurisdictional Magistrate vide order dated 18.9.2013. Since the offences alleged were triable by Court of Sessions, the case was committed to the Court of Sessions and at the stage of framing of charge an application under Section 227 of the CrPC was filed on behalf of the petitioner which has been dismissed by the learned trial court vide impugned order dated 23.9.2015.

4. It has been submitted by the learned counsel for the petitioner that most the witnesses, whose statements were recorded by the police under Section 161(3) of the CrPC during investigation, have given clean chit to the petitione, but only because lately during investigation three witnesses named the petitioner as assailant, he has been charge-sheeted in the case. He has submitted that the prosecution of the petitioner would be an abuse of process of the court in view of the fact that the petitioner is closely related to the deceased and the informant, who is son of the petitioner, did not name the petitioner in the FIR.

5. On the other hand, learned counsel for the State has submitted that from impugned order itself it would transpire that apart

from wife of the deceased three witnesses, namely, Mukesh Kumar, Babita Devi and Lal Pari Devi, whose statements were recorded in paragraphs no. 79, 80 and 81 of the case diary respectively, have categorically stated that it was the petitioner, who had shot at the deceased as a result of which he sustained injury leading to his death.

6. I have heard respective counsel for the parties and perused the record. I find no illegality in the impugned order passed by the court below in view of the fact that four witnesses have named the petitioner as the main assailant of the deceased. It cannot be said that there is no ground against the petitioner for framing of charges. So far as the defence of the petitioner is concerned, it can only be considered by the trial court at an appropriate stage. At this stage, the defence of the petitioner cannot be made a ground for his discharge from the case.

7. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	