

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25845 of 2013

Arising Out of PS.Case No. -40 Year- 2011 Thana -ISLAMPUR District- NALANDA
(BIHARSHARIFF)

=====

1. Mahendra Prasad Singh S/O Late Faggu Mahto Resident Of Mohalla
Mozafra, P.S. Islampur, District Nalanda.
2. Sanjeev Ranjan @ Lala Kumar S/O Mahendra Prasad Singh Resident Of
Mohalla Mozafra, P.S. Islampur, District Nalanda.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Shyamal Prakash, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhayaya (APP)

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

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

2. Petitioner has sought for setting aside the order dated
20.05.2013 passed by 2nd Additional Sessions Judge, Hilsa
(Nalanda) in Sessions Trial No. 210/2012 whereby and
whereunder prayer made on behalf of petitioners under Section
227 of the Cr.P.C. has been rejected, by way of filing instant
petition.

3. It has been submitted on behalf of petitioners that
these two petitioners are not named in the FIR, neither any witness
during course of investigation has stated presence of these two
petitioners during course of commission of alleged crime. It has
also been submitted that for the purpose of treatment the alleged



injured Umesh Prasad was taken to PMCH where he gave his Fard-e-beyan and is part and parcel of the case diary having duly placed under para-40 thereof wherein the names of these two petitioners have also been included along with the FIR named accused Birendra Prasad as well as Annu Mahto. However, it has also been submitted that aforesaid Umesh Prasad has been examined by the Investigating Officer under para-44 and during course thereof, changed the status of these two petitioners. As such, there happens to be no substance whereupon one could infer complicity of these two petitioners during commission of crime. So submitted that the discharge should be allowed by the learned lower court.

4. Learned APP opposed the prayer.

5. After perusal of the case diary, it is evident that none of the witnesses who has been examined at the end of prosecution had named these two petitioners as assailants or associated with the main accused, Birendra and Annu. However, it is evident Umesh Prasad while was being admitted at PMCH gave his Fard-e-beyan whereunder he named these two petitioners. Though subsequently, at para-44 showed presence of these two petitioners witnessing occurrence from their house.

6. Because of the fact that FIR was already existing



since before, on account thereof, the statement of the injured so recorded by Pirbahore PS while he was undergoing treatment at PMCH, lost its identity to be treated as FIR in terms of Section 162 of the Cr.P.C. whereupon, the aforesaid statement could be treated as statement under Section 161 Cr.P.C. which, in the background of subsequent examination of the injured under para-44 by the Investigating Officer himself shook the status of the aforesaid statement to be in terms of Section 161 of the Cr.P.C.

7. That being so, the learned lower court should have considered the status of the statement so recorded under para-40 of the case diary in consonance with the statement recorded under para-44 of the case diary.

8. In the case of *Sonu Gupta v. Deepak Gupta* as reported in **2015(2) PLJR (SC) 321**, the Hon'ble Apex Court has held 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.

9. Therefore, it was expected at the end of the learned lower court to have properly exercised its power while considering the prayer made on behalf of petitioners which, in the facts and circumstances of the case, is found lacking. Accordingly, the order impugned is set aside. Petition is allowed.

10. The matter is remitted to the learned lower court to proceed afresh in light of observation as held above.

(Aditya Kumar Trivedi, J)

perwez

U		T	
---	--	---	--