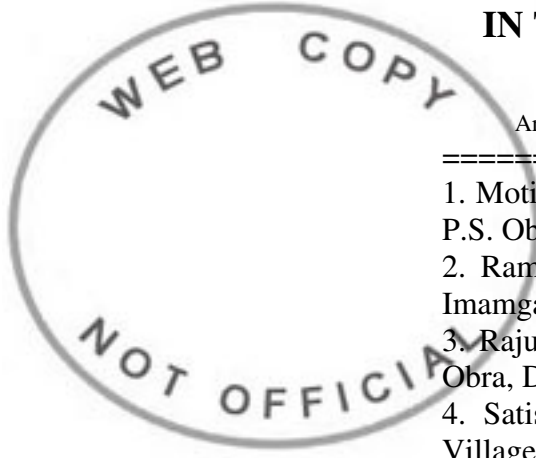




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23328 of 2013

Arising Out of PS.Case No. -149 Year- 2009 Thana -OBRA District- AURANGABAD

- =====
1. Moti Yadav Son Of Late Mohan Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 2. Ram Prasad Yadav Son Of Late Mohan Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 3. Raju Yadav Son Of Moti Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 4. Satish Yadav @ Chhatish Yadav Son Of Moti Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 5. Shyam Narayan Yadav Son Of Late Krit Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 6. Shiv Pujan Yadav Son Of Vishnudeo Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 7. Shivloki Yadav Son Of Shiv Pujan Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 8. Vikash Yadav Son Of Rajendra Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 9. Saroj Yadav Son Of Uday Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 10. Manoj Yadav Son Of Uday Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 11. Santosh Yadav Son Of Janardan Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 12. Bhanu Yadav Son Of Ramdas Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.
 13. Sanjay Yadav Son Of Naresh Yadav Resident Of Village- Imamganj, P.S. Obra, District Aurangabad.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Vijay Singh Son Of Late Kamta Singh, Resident Of Village Mehshi, P.S.- Obra, District Aurangabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hemendra Prasad Singh, Sr.Advocate.
For the Opposite Party/s : Mr. Anish Chandra (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

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26-04-2016

Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor for the State.

Petitioners who happen to be accused of Sessions Trial No.407/12 / 90/12 presently pending before the Ad hoc Additional District and Sessions Judge, Aurangabad, are aggrieved by an order dated 07.05.2013 whereby and whereunder their prayer made under Section 228 (i)(a) of the Cr.P.C. has been rejected.

It has been contended on behalf of the petitioners that learned lower court had, while considering the prayer deflected itself from settled principles of law wherein at the relevant stage of charge the court has to form an opinion attracting applicability of particular provision of law whereunder charge could be framed. Instead thereof, the learned lower court had perceived a prima facie case like cognizance taking court and so, the order impugned happens to be bad and is fit to be set aside.

The learned Additional Public Prosecutor opposed the prayer.

So far factual aspect is concerned, it is evident that so many accused have been named to have inflicted farsa blow over head of injured who arrived after forming an unlawful

assembly. It is also evident that at that very moment other co accused were also armed with fire arm which were never used. From Annexure-2 it is evident that respective injured have sustained corresponding injuries.

From perusal of the order impugned, it is evident that learned lower court had formed its opinion regarding presence of prima facie case attracting Section 307 of I.P.C. after going through the relevant paragraphs of the case diary so enumerated there.

At the present stage, identifying the stage of charge, is the first stage of trial to be proceeded with against an accused for commission of an offence punishable under particular section, and 20 courts have been entrusted to see and which, whether the allegation so attributed, did justify prosecution. It is the moment which is being resisted at the end of accused's mode of consideration of the material by the court and so, found to be debatable. In the aforesaid background, in the recent past the matter of charge has elaborately been discussed in *Amit Kapoor Vrs. Ramesh Chander and anr* (2012) 9 SCC 460. Recently in *Sonu Gupta Vrs. Deepak Gupta* reported in 2015 (2) PLJR 321. (SC), the Hon'ble Apex Court dealt it in following manner laying

down parameter for consideration of the material at the stage of framing of charge and the same is being quoted below:

“8. It is also well settled that cognizance is taken of the offence and not that 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.”

Certainly presence of a prima facie case is forbidden rather presence of sufficient material even to the extent of grave suspicion has to be perceived by the court. However, the learned counsel for the petitioners did not able to controvert the relevant paragraph so incorporated in the order impugned to nullify the finding recorded by the learned lower court, but the aforesaid materials have been found sufficient by the learned lower court to infer prima facie case, which is not the requirement of present stage of charge. Courts are expected to form an opinion over sufficiency of material to proceed with the trial and if so, under what of penal provisions the accused should be charged. Therefore, the learned lower court should have formed an opinion that from the aforesaid paragraphs, the ingredients of an offence punishable under Section 307 of the I.P.C. along with other ancillary penal sections are made out. The order impugned, as is evident, happens to be silent.

That being so, the order impugned is set aside.

Petition is allowed. The matter is remitted back to the learned lower court to consider afresh in light of principle so laid down by the Hon’ble Apex Court as referred, above after hearing rival party.

(Aditya Kumar Trivedi, J)

AnilKrSinha/-

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