

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.70 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- DARBHANGA

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1. Parmeshwar Jha S/O Bsdudeo Jha R/O vill.-Mauje Nayagaon(west)Brahmchari
Tola,P.S-Raiyam Distt.-Darbhanga(Bihar)

.... Petitioner

Versus

1. The State of Bihar
2. Rajesh Jha
3. Sanjay Jha

2 and 3 are Sons of Manrakhan Jha , residents of village-Nayagaon,P.S-Raiyam
Distt.-Darbhanga

.... Respondents

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Appearance :

For the Petitioner : Mr. Subhash Kumar Mishra
For the State : Mr. Uday Pratap Singh
For O. P. Nos. 2 & 3 : Mr. Mirtunjay Kumar

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER
ORAL

Date: 23-06-2017

Heard learned Counsel for the petitioner, learned
Counsel representing the Opposite Party Nos. 2 and 3, and
learned Additional Public Prosecutor appearing on behalf of the
State of Bihar.

2. The petitioner is aggrieved by an order, dated
28.11.2014, passed, by learned Ad hoc Additional Sessions
Judge IV, Darbhanga, in Sessions Trial No. 375 of 2014,
arising out of Raiyam Police Station Case No. 08 of 2013,
whereby he has allowed an application filed on behalf of



Opposite Party Nos. 2 and 3, under Section 223 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), and has accordingly discharged them.

3. The Opposite Party Nos. 2 and 3 are named accused in Raiyam Police Station Case No. 08 of 2013, which was registered for the offences punishable under Sections 341/323/324/307/448/504/506/379/34 of the Indian Penal Code.

4. The petitioner is the informant of said Raiyam Police Station Case No. 08 of 2013. It is alleged in the First Information Report that on the date of occurrence, the accused persons, including Opposite Party Nos. 2 and 3, entered into the petitioner's house and started assaulting the informant, leading to injuries. It is also alleged in the First Information Report that they took away cash and certain other articles from the house.

5. The Police, upon completion of investigation, submitted charge sheet on 11.06.2013 against Opposite Party Nos. 2 and 3, which was subsequently accepted. Thereafter, the Opposite Party Nos. 2 and 3 filed an application under Section 227 of the Code, which has been allowed by the impugned order.

6. From the impugned order, I find that the learned Court below has disbelieved the case of the



prosecution only on the ground that there was some land dispute between the accused persons and the informant existing. The learned Court below noticed, on the basis of the case diary, that some of the witnesses could not be said to be the eye-witnesses.

7. The grounds, which have been mentioned in the impugned order for exercising jurisdiction under Section 227 of the Code, are not, at all, sustainable. The learned Court below ought not have gone into the question of correctness of allegation in the First Information Report while entertaining the application of Opposite Party Nos. 2 and 3 under Section 227 of the Code.

8. The impugned order, dated 28.11.2014, therefore, cannot be sustained and is accordingly set aside. The matter is remanded back to the Court below to pass an order afresh on the petitioner's application under Section 227 of the Code and proceed thereafter accordingly.

9. This application is allowed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.06.2017
Transmission Date	28.06.2017

