

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8962 of 2015

Arising Out of PS.Case No. -98 Year- 2008 Thana -NAUBATPUR District- PATNA

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1. Amresh Kumar @ Pintu Son of Lae Suresh Singh, Resident of Village - Sahar
Rampur, P.S. - Naubatpur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Adv.
Mr. Sunil Prasad, Adv.

For the State : Dr. Rabindra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-11-2017

1. Heard learned counsel for the petitioners and the State.

2. This application has been filed for quashing the order dated 06-01-2015 passed by Additional District & Sessions Judge-II, Danapur in Sessions Trial No. 990 of 2013 arising out of Naubatpur P.S. Case No. 98 of 2008 by which, the learned Sessions Judge rejected the discharge petition filed by the petitioner.

3. It has been submitted that in the supplementary case diary, during investigation, witnesses have not supported the case and thereafter, police submitted final form against this petitioner. The court below has rejected the discharge petition filed on behalf of the petitioner without looking into those materials in the supplementary case diary.

4. Learned APP has submitted that the petitioner is named in the first information report. The petitioner's name has also been taken in original



case diary by the informant in paragraph-2 and by other witnesses in paragraphs- 4 & 5 in the case diary. Police during investigation in supervision note vide paragraph-46 has found the case true against the petitioner and other accused persons. Thereafter, police submitted charge sheet against two accused persons namely Mithilesh Singh and Danesh Singh u/S 302 of the Indian Penal Code and investigation against other accused persons including this petitioner were kept pending. Thereafter on the basis of petition filed by the informant, the police in further supplementary case diary recorded the statement of various witnesses including the statement of informant who have told that the petitioner was not present at the place of occurrence and thereafter, police submitted final form in this case.

5. The court below has differed with the final form and took cognizance against this petitioner along with other accused persons by order dated 12-04-2013. The aforesaid order was challenged by the petitioner in this court vide Cr. Misc. No. 11362 of 2014 and the same was dismissed on 11-09-2014.

6. From perusal of the impugned order, this court finds that the Magistrate has mentioned that the petitioner is named in the first information report. The informant in his further statement and two witnesses in paras-4 & 5, have supported the case and taken the name of this petitioner in case diary. The police in original case diary vide para-104 in the supervision note has found the case true against the petitioner but charge sheet was submitted only against two accused persons and



investigation against the petitioner and other accused persons was kept pending. Thereafter, police submitted final form on the basis of material mentioned in supplementary case diary.

7. Section-227 Cr.P.C. clearly speaks that the accused shall be discharged in the event the judge considers that there is no sufficient ground for proceeding against the accused and record his reasons for doing so.

8. Section-228 (1) Cr.P.C. speaks that after such consideration and hearing, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection(1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.



9. In the instant case, the witnesses have supported the case in paragraphs-12, 4 & 5 of the case diary.

10. As per provision laid down in Section-228 Cr.P.C, after such consideration and hearing, the Judge is of the opinion that there is ground for presuming that accused has committed the offence, he may frame a charge.

11. Therefore, this court does not find any illegality in the impugned order. Accordingly, this Cr. Misc. Petition is dismissed.

12. The court below is directed to proceed in trial in accordance with law after framing of charge against this petitioner and other accused persons. The court below will pass appropriate order on the basis of evidence of witnesses brought on record on behalf of the prosecution during trial.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06-12-2017
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