

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46270 of 2014

Arising Out of PS.Case No. -45 Year- 2012 Thana -DHANARUA District- PATNA

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1. Rajnikant Bharti, Son of Rajdeo Prasad, Resident of village- Raghunathpur,
P.S.- Danarua, District- Patna

2. Viajy Kumar, Son of Late Karu Prasad, Resident of village- Redbiga, P.S.-
Danarua, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar

2. Shivpujan Sharma, Son of Late Prashid Narayan Sinha, Resident of village-
Jalalpur, P.S.- Danarua, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Adv.

For the Opposite Party no.2 : Mr. Uma Shankar Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 11-10-2017

Heard learned counsel for the petitioners and learned
counsel representing the opposite party no.2.

Petitioners have challenged the order dated
24.06.2014 passed by learned Judicial Magistrate-1st Class, Masaurhi
in Dhanarua P.S. Case No.45 of 2012 by which he has rejected the
application filed on behalf of the petitioners under Section 239
Cr.P.C.

A short question has been raised on behalf of the
petitioners for assailing the impugned order. Learned counsel for the
petitioners submits that a bare perusal of the impugned order would



show that the learned Magistrate has not given any reason for rejection of their application under Section 239 Cr.P.C. According to him, an accused has valuable right contained in Section 239 Cr.P.C. to make an application for discharge which was availed in the present case, but the learned Magistrate simply rejected the application by saying that perusal of the documents and the police report shows basis of the allegations. Learned counsel further submits that this is not the stage of the cognizance where only a prima facie case has to be shown. At the stage of framing of charge, the court has to consider the materials vis-à-vis ingredients of the offences alleged. Since no reason has been assigned by the learned Magistrate, the order is bad in law.

Learned counsel representing the informant-opposite party no.2 opposed the application and submitted that there is no illegality or infirmity in the impugned order. The learned Magistrate having found a prima facie case has rejected the application under Section 239 Cr.P.C.

This Court is convinced with the argument of learned counsel for the petitioners that at the stage of Section 239 Cr.P.C. the learned Magistrate has to see more than a prima facie case, at this stage the court has to see whether the materials available on the record satisfy the ingredients of the offences alleged or not. Since no reason has been assigned in the impugned order, the impugned order is



hereby set aside with a direction to the learned Judicial Magistrate -1st Class, Masaurhi to pass a fresh order on the application under Section 239 Cr.P.C. filed on behalf of the petitioners after giving an opportunity of hearing to both the parties within a period of two months from the date of receipt of this order.

The application is allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
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