

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.55079 of 2016

Arising Out of PS.Case No. -790 Year- 2012 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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Abhinav Kumar son of Late Shankar Yadav, resident of village- 07 number Gumti,
Kanchangarh, P.S.- Mufassil, District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sulo Devi wife of Late Ambika Prasad Yadav, resident of village- Kanchangarh,
Gumti No.7, P.S.- Mufassil District- Munger.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Indu Bhushan, Advocate
	:	Mr. Sunil Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-09-2017

The present application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed for quashing the order dated 27.10.2016 passed in Sessions Trial No.172 of 2015 arising out of Complaint Case No.790(C) of 2012 by the learned Sessions Judge, Munger whereby the application under Session 227 of the CrPC for discharge of the petitioner from the case has been rejected.

2. The contention of Mr. Indu Bhushan, learned Advocate appearing for the petitioner is that initially an FIR was instituted in respect of the alleged occurrence and on completion of investigation the police did not find culpability of the petitioner in any manner. He



has submitted that while investigation was going on, the informant of the case had filed a protest petition, which was treated as complaint by the court at the time of accepting the final report submitted by the police in connection with Kasim Bazar P.S. Case No.80 of 2010. He has contended that the petitioner is a Constable employed in the State of Jharkhand and, at the relevant time, he was posted at Barharwa. He was present on his duty. He has submitted that the complainant is an agnate of the petitioner and, due to enmity existing from before between the parties, when husband of the complainant was killed by some unknown criminals, the petitioner and his family members have been framed in a false and frivolous case.

3. On the other hand, learned counsel for the State has submitted that the complainant does not claim herself to be a witness to the occurrence. However, several witnesses examined in course of enquiry under Section 202 of the CrPC, as also under Section 244 of the CrPC, have categorically stated that the petitioner had actively participated in the commission of murder of the husband of the complainant. He has submitted that in view of the materials collected in course of complaint case, a strong case for putting the petitioner on trial is made out and, in that view of the matter, no illegality can be found with the impugned order whereby the learned court below has rejected the application of the petitioner for discharge.



4. I have heard learned counsel for the parties and perused the record.

5. Section 227 of the CrPC mandates that if, upon consideration of record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

6. So far as the present case is concerned, it is true that initially an FIR was instituted and, on completion of investigation, the petitioner was found to be innocent, but it is also a fact that a protest petition was filed by the complainant in course of investigation alleging that the investigating agency was in collusion with the accused persons. On submission of police report under Section 173(2) of the CrPC, the court while accepting the same directed for institution of a complaint case on the basis of protest petition.

7. From the record, it transpires that the complainant and the witnesses examined on behalf of the complainant have made specific allegation against the petitioner regarding his participation in the offence. At the time of framing of charge meticulous examination of statement of witnesses is not to be made and the court has only to see as to whether or not there are sufficient materials for proceeding



against the petitioner.

8. In view of the materials collected in the complaint case, simply because the police had submitted final form against the petitioner holding the accusation to be not true against him, the petitioner cannot be discharged from the case. The witnesses examined before charge have specifically alleged against the petitioner that he had participated in commission of murder of the husband of the complainant. Moreover, the defence of the petitioner pertaining to his innocence can only be looked into on examination of witnesses during trial.

9. In that view of the matter, I see no merit in this application. The application is, accordingly, dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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