

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.650 of 2014

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Mahendra Sahani, son of Late Ram Saran Sahani, resident of
village - Dularpur, P.S. Sadar Darbhanga, District – Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Shailiya Devi, W/o Late Raj Kumar Sahani, Resident of village -
Mazuriha Dularpur Ruchaul, P.S. Bhalapatti, District – Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.

Mr. Amit Kumar, Adv.

Mr. Ravi Ranjan, Adv.

For the O.P. No. 2 : Mr. Girish Chandra Jha, Adv.

For the State : Mr. Dr. Ajit Kumar, APP

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

ORAL JUDGMENT & ORDER

Date: 17-01-2017

Heard the parties.

2. The present criminal revision application, under
Sections 397 and 401 of the Code of Criminal Procedure
(*hereinafter referred to as "the Code"*), has been filed against an
order, dated 07.06.2014, passed by the learned Ad hoc
Additional Sessions Judge IV, Darbhanga, in Sessions Trial No.
425 of 2013, arising out of Sadar (Bhalpatti O.P.) P.S. Case No.



481 of 2011, whereby, the learned court below has dismissed the petitioner's application, made under Section 227 of the Code, for discharge.

3. The petitioner has been named accused in the said Sadar (Bhalpatti O.P.) P.S. Case No. 481 of 2011, registered for the offences punishable under Sections 302 and 379 read with Section 34 of the Indian Penal Code (*hereinafter referred to as the "IPC"*). The case of the prosecution in brief is that the informant learnt on 24.12.2011, that her brother was lying dead in a pond near a temple. Allegedly, when she went there, she found the dead-body of her husband lying. It is alleged that at some distance, she had seen one Ghanshyam Choudhary, standing there with a quack (unqualified village doctor), whose motorcycle was parked there. On the basis that there was some kind of animosity between the deceased and other accused persons, including the petitioner, she named 4 persons in her *fardbeyan*, which is the basis for the registration of the First Information Report.

4. Be it noted that over and above suspicion raised in the *fardbeyan*, nothing was alleged against either of the accused persons named therein, including the petitioner. The police, upon completion of the investigation, submitted charge-sheet against all the 4 named accused persons for commission of offence punishable under Sections 302, 379 and 120B read with



Section of the IPC. The cognizance was taken thereafter.

5. With a case that even in course of investigation no material suggesting involvement of any of the accused persons in commission of the offence could be collected, the petitioner and other 3 accused persons filed an application, under Section 227 of the Code, with a plea that there being no sufficient ground for proceeding against them, they should be discharged. Learned court below by the impugned order, dated 07.06.2014, has discharged one of the accused, namely, Rajesh Kumar Mishra @ Seth Ji, and rejected such prayer made on behalf of other 3 accused persons.

6. Assailing the impugned order, learned counsel, appearing on behalf of the petitioner, has submitted that there is absolutely no material collected in course of investigation, which can suggest involvement of the petitioner, even if such materials are taken to be true. It is, accordingly, his submission that learned court below, without considering the fact that there was nothing more than suspicion against the petitioner, rejected the said application filed under Section 227 of the Code.

7. Learned counsel, appearing on behalf of opposite party No. 2, the informant, while opposing the prayer made on behalf of the petitioner, has submitted that in course of investigation it has come that there was enmity between the petitioner and the deceased because of some dispute over



Jalkar. He has submitted that on the very day when the deceased died, a decision over the dispute between the deceased and the petitioner had come with an order passed by the Divisional Commissioner. He has, accordingly, submitted that there was strong circumstance suggesting involvement of the petitioner and other co-accused persons to infer that they had conspired and killed the deceased.

8. Pursuant to this Court's order, dated 12.09.2014, case diary of concerned Darbhanga Sadar (Bhalpatti O.P.) P.S. Case No. 481 of 2011 was called, which has been received.

9. On a query made by this Court as to whether even if all the materials collected in course of investigation are treated to be true and correct and are proved at the trial, whether the petitioner can be convicted of the offence alleged, learned counsel, appearing on behalf of opposite party No. 2, did not have any answer except that the circumstance showing involvement of the petitioner has been found to be strong.

10. From the impugned order, I do not find that there is any discussion as to what were the materials collected in course of investigation that there was sufficient ground for presuming that the petitioner had committed the offence alleged. There appears to be no material collected in course of investigation to suggest direct or indirect involvement of the petitioner. What I find from the order that after merely referring



to the statement of one Puran Sahni, recorded by the police in paragraph 15 of the case diary, the learned court below has rejected the petitioner’s application filed under Section 227 of the Code, which, in my opinion, is not justified.

11. The order, dated 07.06.2014, is, accordingly, set-aside. Learned court below is directed to reconsider the petitioner’s application for his discharge under Section 227 of the Code and pass an order afresh. The learned court below will be obliged to deal categorically in the order the material(s) collected in course of investigation, which, according to the Court, constitute(s) sufficient ground for proceeding against the petitioner, if, according to the court below, the application, under Section 227 of the Code, is to be dismissed. In any event, learned court below will be required to pass a detail reasoned order with reference to the materials collected in course of investigation.

12. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
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