

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50303 of 2014

Arising Out of PS.Case No. -134 Year- 2012 Thana -SIKANDARA District- JAMUI

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1. Rabindra Singh son of Kedar Singh,
2. Fukan Singh @ Fulan Singh son of Kedar Singh
3. Ghughan Singh son of Kedar Singh
4. Gulsan Singh son of Rabindra Singh, All residents of village- Kayuar, P.S.-
Sikandra, District- Jamui, Bihar

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Sinha, Advocate

For the Opposite Party/s : Mr. S. Dayal (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 17-11-2017

This application under Section 482 of the Cr.P.C. has been filed for quashing the order dated 22.11.2014 passed by learned Additional Sessions Judge- II, Jamui, in Sessions Trial No. 436 of 2013 arising out of Sikandra Police Station Case No. 134 of 2012 dated 04.07.2012 instituted for the offences punishable under Sections 147, 323, 324, 447 and 504 of the Indian Penal Code by which the application filed under Section 227 of Cr.P.C. for discharging them has been rejected.

2. Briefly stated, the prosecution case, as stated in the FIR instituted on 04.07.2012, is that on fateful day all the accused persons came with lathi, Khanti, Paina and abused informant and



claimed that land of informant belongs to petitioners.

3. It is further alleged that accused persons also assaulted his wife and when informant and his daughter went to save her, all the accused persons assaulted informant and his daughter.

4. On investigation and supervision by the higher Police Officials, it was found that offences under Sections 341, 323, 308, 447, 504 read with 34 of I.P.C. are made out against the petitioners and charge sheet No. 164 dated 23.07.2012 was submitted by the police, upon which cognizance was taken against the petitioners by the trial court and case was committed to the court of Session.

5. A petition under Section 227 of Cr.P.C. was filed by the petitioners before the Trial Court stating therein that allegations as made in the FIR are false and they have been falsely implicated in this case. It has further been submitted by them that the injuries as reported are simple in nature and, therefore, no offence against the petitioners are made out and, as such, they be discharged. It has been further contended that no offence under Section 308 of I.P.C. is made out and as such case be remitted to the Court of Chief Judicial Magistrate as case is a warrant case.

6. After hearing both the parties, the court of Additional Sessions Judge rejected the petition filed by the petitioners under Section 227 of Cr.P.C. on the ground that there are sufficient



materials on the record against accused persons for framing of charge. The court below has also held that offence under Section 308 of I.P.C. is also made out against the petitioners on the basis of evidences collected and statement of witnesses made during investigation. The court below has held that accused petitioners variously armed with lathi, paina and Khanti assaulted the informant and his family members and also abused them when informant claimed that the land belongs to him. All the witnesses have supported the case of informant. From the injury report, all the injuries are said to be simple in nature but some is on the vital parts of the body. The weapons used were also sharp as well as blunt substance, as such, there are sufficient evidence for framing charge under Section 308 of I.P.C. and, thereafter, the court below rejected the petition of petitioners and directed them to be personally present for framing of charge.

7. The Apex Court in its judgment and order as reported in 2012 (9) SCC 460 in para 17 held as under:-

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either



discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

8. Under the facts and circumstances of this case and in view of law laid down by Apex Court, I am not inclined to interfere with the order passed by the trial court dismissing the discharge



petition of petitioners and framing of charge against accused
petitioners.

9. The Petition stands dismissed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

