

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.17084 of 2016**

Arising Out of PS.Case No. -95 Year- 2015 Thana -AURANGABAD TOWN District-  
AURANGABAD

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Janeshwer Chandrabanshi s/o late Kishen Singh @ late Kishun Singh  
Chandrabanshi, resident of village- Rambandh, P.S. Aurangabad  
(Town), District- Aurangabad(Bihar).

.... .... Petitioner/s

Versus

The State of Bihar

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Dr. Leelawati Kumari

For the Opposite Party/s : Mr. M.atloon Rab, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR**  
**SINGH**  
**ORAL ORDER**

2      30-08-2017      Heard learned counsel for the petitioner and learned  
counsel for the State.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 17.03.2016 passed in S.Tr.No. 262 of 2015/ 16 of 2015 arising out of Aurangabad Town P.S.Case no. 95 of 2015 whereby and whereunder the application filed by the petitioner under Section 227 of the Code of Criminal Procedure for discharge from the case has been rejected.

It would be evident from the FIR that the case was instituted under Sections 302/34 and 120(B) of the Indian Penal Code as well as Section 27 of Arms Act. The petitioner is one of the accused person named in the FIR.

Learned counsel for the petitioner has submitted



that on completion of investigation though the police sent up three persons for trial, the petitioner was not sent up for trial as his complicity in the alleged offence was not found true. It is submitted that without there being any evidence against the petitioner, the learned C.J.M differed with the police report and, after taking cognizance against him committed the case to the Court of Sessions for trial. He has submitted that the Sessions Court also failed to appreciate the fact that there was no legal evidence against the petitioner on the basis of which he could have been put on trial.

Learned counsel for the State has submitted that the complicity of the petitioner was found during investigation, but a collusive report was submitted by the police. He has submitted that relying upon the statements of the witnesses recorded under Section 161 Cr.P.C., the learned C.J.M., Rosera had rightly differed with the police report and summoned the petitioner to face trial. According to him, there is sufficient material against the petitioner to put him on trial.

I have heard respective counsels for the parties and perused the records.

If the court forms an opinion that there is ground for presuming that the accused has committed the offence, it shall frame charge against the accused in terms of Section 228 of the



Code of Criminal Procedure. It would be manifest from the order passed by the learned A.C.J.M, Rosera that the culpability of the petitioner was disclosed by the informant not only in the FIR, but also in the statements of the witnesses recorded in the case diary. Accordingly the learned A.C.J.M., Rosera had differed with the police report whereby the petitioner was shown as innocent and summoned him to face trial. On appreciating the materials available on record, if the trial Court has come to the conclusion that there are materials to put the petitioner on trial, no illegality can be found with the order impugned.

Accordingly, the application is dismissed.

**(Ashwani Kumar Singh, J)**

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