

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.140 of 2017

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Manish Kumar, Son of Late Shyam Nandan Prasad, Resident of Village-Bajopur,
P.S. Muffasil, District Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Sikandar Kumar Rai, Son of Kusheshwar Rai, Resident of Village-Balbhadrapur,
P.S. Muffasil, District Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate.
Mr. Ajit Kumar, Advocate.

For the Respondent/s : Mr. Uday Pratap Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 31-08-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Learned counsel for the petitioner seeks for setting
aside order dated 01.12.2016 passed by the Additional District and
Sessions Judge-2, Samastipur in Sessions Trial No. 804 of 2006
arising out of Samastipur Town P.S.Case No. 241 of 2001 whereby he
has rejected the application filed under Section 227 of the Indian
Penal Code by the petitioner to discharge from the case.

3. In a very short compass, the facts of the case requires
to be narrated for disposal of this application. The petitioner has been
summoned in this case to face trial under Section 319 Cr.P.C. The
petitioner challenged summoning order under Section 319 Cr.P.C.



before this court prior to present application, which was dismissed thereafter filed a petition for discharge, the same was rejected by the impugned order.

4. Learned counsel for the petitioner submits that no show cause was issued to the petitioner before summoning him under Section 319 Cr.P.C.

5. The earlier application filed by the petitioner before this Court challenging summoning order under Section 319 of Cr.P.C. has already been dismissed considering the merit of the case. The only question to be decided in the present application is whether application under Section 227 of the Cr.P.C. of an accused, who has been summoned under Section 319 Cr.P.C., is maintainable or not. This relevant issue has also been decided by the Hon'ble Supreme Court in one of the judgments delivered in the case of **Jogendra Yadav Vs. State of Bihar** reported in **(2015) 9 SCC 244**. The Hon'ble Supreme Court, in the aforesaid case, has made distinction relating to parameters for discharging the accused having no sufficient grounds but the same principle cannot be applied at the stage of summoning the accused u/s 319 Cr.P.C. finding sufficient evidence at the stage of trial. The Supreme Court, in paras 11 and 12, laid down the ratio, which reads as follows:

“11. Thus, it does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the



basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused.

12. This view is further fortified by the fact that a person is added as an accused under Section 319 Cr.P.C., on the basis of evidence; whereas an accused is discharged under Section 227 Cr.P.C., on a sifting of material collected i.e., “*the record of the cause and the documents submitted herewith*” in order to find out whether or not there is sufficient ground for proceeding against the accused. In fact it may be noted that the mandate of Section 228 Cr.P.C. is that the Judge only need to be of “*Opinion that there is ground for presuming that the accused has committed an offence...*” (emphasis supplied)

Before framing a charge. In fact this Court has held in *Ajay Kumar Parmar v. State of Rajasthan*’ (2012) 12 SCC 406 that appreciation of evidence at the stage of Section 227 CrPC, is not permissible (vide para 17). It is, therefore, clear that an order for addition of an accused made after considering the evidence cannot be undone by coming to the conclusion that there is no sufficient ground for proceeding against the accused without appreciation of evidence.”

6. In the present application also, applying the principle laid down in the said case, the petition of discharge under Section 227 of the Cr.P.C. is not maintainable in the backdrop of the facts of the case. So this application stands dismissed.

7. However it is made clear that the court has not expressed any view with regard to merit of the case.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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