

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49059 of 2013

Arising Out of PS.Case No. -89 Year- 2005 Thana -PATNA CITY CHOWK District- PATNA

- =====
1. Surendra Prasad Son Of Late Shishnath Prasad Resident Of Mohalla - Tarkari, P.S. Chowk, District - Patna
 2. Madan Prasad @ Madan Kr. S/O Late Jhameli Sao R/O Kachavri Gali, P.S. Chowk, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ashok Kumar, S/o Late Radhe Krishna Prasad, resident of Neemghat, P.S. Khajekalan, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Mouar
Mr. Harish Kumar &
Mr. Raj Krishna Jha, Advocates
For the State : Mr. Satyanand Shukla (App)

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

4 16-01-2017 The petitioners Surendra Prasad and Madan Prasad are accused in connection with Patna City Chowk P.S.Case No. 89 of 2005 initially registered for the offences under Sections 341,323, 325 and 307/34 of the Indian Penal Code and subsequently Section 302 of the Indian Penal Code was also added on 8.12.2005.

The first informant is father of deceased Supriya Saha alias Chhoti. Supriya had gone to the house of son-in-law of the informant on the call of co-accused Mukesh Kumar. Surendra and Mukesh started quarreling with Supriya and the petitioners along with Mukesh and Upendra dashed Supriya from the roof of



the house as a result whereof Supriya fell down and sustained serious injuries and she was hospitalized. Subsequently, Supriya died in the course of treatment.

The police did not send the petitioners for trial. However, cognizance was taken by the learned Magistrate in disagreement with the police report. The petitioners filed a petition for their discharge under Section 227 Cr.P.C. The prayer was refused by the learned trial Judge in Sessions Trial No. 488 of 2012 on 17.9.2013. The refusal is under challenge in this application under Section 482 Cr.P.C.

The submission of the petitioners is that there is no eye witness of the occurrence including the informant. Their further submission is that there is no substantial material against the petitioners in the case diary. However, the court below in the mechanical manner passed the impugned order.

The case diary would reveal that the victim girl in her statement before the police stated that since her lover Mukesh was going to marry with some other lady, she jumped from the roof of the house and sustained injury. She further stated that Mukesh is brother of her brother-in-law and had love affairs since last 2-3 years. The case diary would further reveal that there is no eye witness to the occurrence. Some of the witnesses who met the



victim during the course of her treatment in the hospital stated that the victim disclosed to them that Mukesh and Upendra had thrown her. The victim did not name the petitioners before those witnesses. Therefore, apparently, there was no material to proceed with the trial against the petitioners.

Submission of the learned counsel for the State is that at the stage of framing of charge meticulous appreciation of evidence is not permissible and even suspicion is sufficient to frame the charge.

There is no dispute regarding the aforesaid proposition. However, the suspicion must be based on some material collected during the investigation. There is no material at all against the petitioners. The fate of the trial against the petitioners is apparent. Hence its continuance would be an abuse of the process of the court which cannot be allowed.

Accordingly, the impugned order dated 17.9.2013 is set aside and this application stands allowed.

(Birendra Kumar, J)

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