

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28494 of 2013

Arising Out of PS.Case No. -30 Year- 2005 Thana -KAHALGAON District- BHAGALPUR

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1. Satyanarayan Mandal Son Of Late Durga Mandal, Resident Of Village-
Khutahari, P.S.- Kahalgaon, Distt- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

=====

with

Criminal Miscellaneous No.50485 of 2013

Arising Out of PS.Case No. -30 Year- 2005 Thana -KAHALGAON District- BHAGALPUR

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Khutahari, P.S.- Kahalgaon, Distt- Bhagalpur

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Appearance :

(In Cr.Misc. No.28494 of 2013)

For the Petitioner/s : Mr. Ranjan Kumar Jha, Adv.
Mr. Mrityunjay Kumar Mishra, Adv.
Mr. Sanjeev Kumar @ Deepak Sahayar

For the Opposite Party/s : Mr. Shyam Kumar Singh (App)138

(In Cr.Misc. No.50485 of 2013)

For the Petitioner/s : Mr. Ranjan Kumar Jha
Mr. Mrityunjay Kumar Mishra, Adv.
Mr. Sanjeev Kumar @ Deepak Sahayar

For the Opposite Party/s : Mr. Shyam Kumar Singh (App)138

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 30-01-2017 The petitioner Satyanarayan Mandal is the informant of

Kahalgaon P.S. Case No. 30 of 2005 registered for offences under

Sections 302 and 201/34 of the Indian Penal Code, against

unknown. When the petitioner was informed by his niece that his



son-in-law Shrawan Kumar has been murdered, the petitioner (informant of the present case) suspected that co-accused Subhash Kumar Mandal is behind the aforesaid murder and lodged the aforesaid FIR.

During investigation material came on the record of case diary that deceased Shrawan Mandal had provided money to this petitioner for managing job in NTPC Kahalgaon. When the job was not managed, for refund of money there was quarrel between the petitioner and the deceased Shrawan Kumar on several occasions. Therefore, the petitioner is also under suspicion that he committed murder. After investigation, the police submitted charge-sheet against the petitioner i.e. informant of Kahalgaon P.S. Case No. 30/2005. On commitment of the trial to the court of Sessions, the same was registered as S.Tr. No. 1274 of 2011. By order dated 08.05.2013, the learned trial court dismissed the prayer of the petitioner for discharge under Section 227 Cr.P.C. The petitioner challenged the aforesaid order in Cr. Misc. No. 28494/2013 above. Subsequently, by order dated 21.09.2013, the learned trial court framed the charge against the petitioner. The said order is under challenge in Cr. Misc. No. 50485/2013 above.

Submission of the petitioner is that the case diary and the record would reveal that the investigation of Kahalgaon P.S.



Case No. 30/2005 was going on in a lethargic manner. When the charge-sheet was not submitted for two years, the petitioner lodged complaint to the learned Judicial Magistrate concerned as well as higher officials of the police. Thereafter, from para 96 onwards, which is referred in the impugned order, statement of the witnesses were recorded wherein they simply raised suspicion against the petitioner for the reason that the petitioner had taken money from the deceased for managing job for him in the NTPC and for that money there was quarrelling between the two on different previous occasions. Wife of the deceased has also stated the aforesaid fact.

According to the learned counsel the aforesaid material is just to harass the petitioner.

The law is well settled that at the stage of framing of charge under Section 228 Cr.P.C. even suspicion based on material on the record is sufficient. The probable defence and the reason behind collection of the evidences creating doubt against the petitioner, cannot be looked into at this stage. Reference may be made to the case of **Amit Kapoor Vs. Ramesh Chander reported in 2012 (9) SCC 460**. Para 17 of the judgment is being produced below:

“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.”

In the result, both the cr. misc. applications stand dismissed. However, the trial court is directed to expedite the trial and conclude the same at the earliest.

(Birendra Kumar, J.)

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