

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20507 of 2018

Arising Out of PS.Case No. -149 Year- 2017 Thana -WARISNAGAR District- SAMASTIPUR

- =====
1. Mithilesh Jha, Son of Late Gaya Jha
 2. Suresh Jha, Son of Late Gaya Jha,
 3. Naresh Jha, Son of Late Gaya Jha, All, resident of Village- Hansa Ekdwari, P.S.- Warisnagar, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Jay Shankar Jha, Son of Harikant Jha, resident of Village- Mahisari Deeh, P.S. Ujiarpur, District- Samastipur.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha

For the Opposite Party/s : Mr. Sri Khurshid Anwar

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 13-08-2018

The defects pointed out by the Registry are ignored.

2. Heard learned counsel for the petitioners and learned counsel for the State.

3. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioners for quashing the order dated 18.01.2018 passed by the learned 1st Additional Sessions Judge, Samastipur in Sessions Trial No. 757 of 2017 arising out of Warisnagar P.S.Case No. 149 of 2017 whereby and whereunder he has refused to discharge the petitioners in terms of Section 227 of the Cr.P.C.

4. The contention advanced on behalf of the petitioners is that they have been implicated in this case on account of long



standing enmity between the parties. The post-mortem report does not corroborate the case of the prosecution because as per allegation more than 20 accused persons are said to have assaulted the deceased, but the doctor, who conducted post-mortem examination, found only one injury on the person of the deceased. The further contention of the petitioners is that though the deceased was assaulted on 31.05.2017, the First Information Report has been instituted after seven days on 08.06.2017.

5. On the other hand, learned counsel for the State opposed the application filed on behalf of the petitioners. He submitted that there is no error in the order passed by the court below. In the First Information Report, it has been alleged that the petitioners along with others had assaulted the father-in-law of the informant on 31.05.2017 at about 10.30 p.m. in which he sustained injury and was undergoing treatment in the hospital and only after he died, the First Information Report was instituted. He contended that the delay in institution of the First Information Report cannot be a ground to discharge the accused especially when the case is instituted for the offences punishable under Section 302 of the Indian Penal Code. He further contended that merely because post-mortem report does not match with the ocular allegation made in the FIR, the accused cannot be discharged when the



witnesses examined in course of investigation have supported the allegations made in the FIR.

6. I have heard learned counsel for the parties and carefully perused the record.

7. The fardbeyan of one Jai Shankar Jha was recorded on 08.06.2017 at 9.05 a.m. in Patna Medical College & Hospital, Patna alleging therein that on 31.05.2017 one Sant Kumar, father-in-law of the informant had gone in *Barat* of his relative Kamlesh Jha, who had enmity with his agnate, and in the procession of *Barat* at about 10.30 p.m. a dispute arose between the *Barat* parties and, hence, the members of the *Barat* party started fleeing from the scene. On seeing the stampede, the FIR named accused including the petitioners and some unknown apprehended his father-in-law and started assaulting him by means of butt of pistol as a result of which he became unconscious and he was taken to Civil Hospital, Samastipur and from there in a private clinic at Begusarai and lastly at Patna Medical College & Hospital, Patna where in course of treatment he died.

8. On the basis of said fardbeyan, FIR was registered on 16.06.2017 inter alia under Section 302 of the Indian Penal Code against the petitioners and three others and investigation was taken up.



9. It would appear from the order impugned that the witnesses examined in course of investigation have supported the allegation made in the FIR in their statement under Section 161(3) of the Cr.P.C. On the basis of materials collected in course of investigation, the Investigating Officer found the prosecution case to be true. Accordingly, charge-sheet was submitted in the court. The court of Magistrate took cognizance of the offence and committed the case to the court of Sessions. At the stage of framing of charge, an application for discharge was filed on behalf of the petitioners under Section 227 of the Cr.P.C. Having considered the materials on record and after hearing the submissions made on behalf of the parties, the court below found that there was sufficient material to proceed against the petitioners and, thus, it rejected the application filed on behalf of the petitioners.

10. In my considered opinion, simply because there is delay in institution of the FIR or there is some discrepancy in the allegations made in the FIR and the post-mortem report, the order impugned cannot be said to be bad. It is well settled position in law that charges can be framed even on strong case of suspicion. Here, in the present case, the petitioners are named in the FIR with direct and specific allegations. The allegations have been



supported by the witnesses in course of examination during investigation. The appreciation of evidence either oral or documentary is to be done only during trial and not at the stage of framing of charge.

11. In that view of the matter, I see no merit in this application. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

U			
---	--	--	--

