

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50409 of 2014

Arising Out of PS.Case No. -89 Year- 2014 Thana -DARBHANGA SADAR District-
DARBHANGA

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1. Kamla Kant Mishra, son of Babujee Mishra, resident of village- Navhath, P.S.-
Pandal, District- Madhubani, at present posted as Messenger, Uttar Bihar
Gramin Bank, Bhalpatti, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. Mirza Imam Beg, son of Mirza Ovair Alam Beg, resident of village- Bhalpatti
(Tola- Mugalpura), P.S. Sadar (Bhalpatti O.P.), District Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Jha, Advocate
For the State : Mr. Nawal Kishore Pd., APP
For the Opposite Party No.2: Mr. Iqbal Asif Niazi, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 08-01-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.09.2014 passed by the *Adhoc* Additional Sessions Judge, IV, Darbhanga, in S.T. No.332 of 2014 arising out of Sadar (Bhalpatti OP) P.S. Case No.89 of 2014) by which he has allowed the petition filed by the Opposite Party No.2 under Section 227 Cr. P.C. and discharged him from the offence under Section(s) 302/396 Indian Penal Code and Section 27 of the Arms Act.

2. Counsel for the petitioner has submitted that the Court below has discharged the Opposite Party No.2 without



properly perusing the evidence collected by the police during investigation. There was detail of mobile tower location to implicate the Opposite Party No.2 in the offence.

3. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of *State Vs. Nalini & Ors.* reported in (1999) 5 SCC 253, *State of Tamil Nadu vs. N. Suresh Rajan* reported in AIR 2014 SC (Supp) 1982 and the judgment of the Gauhati High Court in the case of *Smt. Sita Devi vs. Shyam Singh* reported in 1994 CRI L J 26 in support of his contention.

4. Counsel for the Opposite Party No.2 has submitted that there is no illegality in the impugned order. There was no material in the case diary except the confessional statement of Mirza Mukammil Beg. He has further submitted that Mirza Mukammil Beg in the confessional statement has stated that Opposite Party No.2 had tried to stop Mirza Rahmani Beg from firing at the Bank Manager.

5. Perused the impugned order and the materials available on record.

6. This Court finds that Opposite Party No.2 has been made accused in this case on the basis of confessional statement of Mirza Mukammil Beg. Mirza Mukammil Beg has stated in his confession that this Opposite Party No.2 was his friend to play cricket. Mirza Rahmani Beg has given confessional statement in para



143, wherein, it is alleged that this Opposite Party No.2 was saving the Manager of the Bank (since deceased). Confessional statement of the Opposite Party No.2 was also recorded, wherein, he has stated that he was playing cricket and he was called by other accused in the bank. Mirza Rahmani Beg fired upon the Manager in the Bank. It further appears that the police has taken signature of the Opposite Party No.2 on the confessional statement.

7. Counsel for the Opposite Party No.2 has submitted that taking signature of the Opposite Party No.2 on the confessional statement by the police simply shows highhandedness and interestedness of the police in implicating Opposite Party No.2. It is not required under law to take signature of the accused on the confessional statement. The police has forced Opposite Party No.2 to put signature and, as such, action of the police shows that confession of the Opposite Party No.2 was obtained by the police by force. The Court below in the impugned order has clearly stated that besides confession there is no other material against this Opposite Party No.2 about his involvement in the aforesaid occurrence.

8. Section 227 of the Code of Criminal Procedure clearly states that: *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the*



Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

9. In the instant case, this Court finds that the learned Court below has given sufficient reasons for discharging the Opposite Party No.2 from the charges levelled against him.

10. In view of such, this Court does not find any merit in this application.

11. Accordingly, this application is dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23-01-2018
Transmission Date	23-01-2018

