

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50468 of 2014

Arising Out of PS.Case No. -185 Year- 2008 Thana -MANIGACHI District- DARBHANGA

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1. Md. Nazuk Khan son of Md. Mintullah Khan, resident of Village- Ashapur, P.S.- Bahera, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. Shiv Shankar Mandal @ Bhulla Mandal, S/o Late Raghunandan Mandal, resident of Village- Bhagwatpur, P.S.- Bahera, District- Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar, Advocate.
For the State : Mr. Jagdhar Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-01-2018

This petition has been filed for quashing the order dated 11-11-2014 passed by the learned Adhoc Additional Sessions Judge-IV, Darbhanga in Sessions Trial No. 450 of 2011 arising out of Manigachi P.S. Case No. 185 of 2008 whereby and whereunder the learned Court below allowed the petition filed by opposite party No. 2 u/S 227 Cr.P.C.

Heard learned counsel for the petitioner and learned counsel, appearing for opposite party No. 2 .

Counsel for the petitioner has submitted that the court below has committed illegality in passing the impugned order on a petition u/S 227 Cr.P.C. The court below has passed the impugned order in the manner as if, he is sitting in trial.

Counsel for the petitioner has submitted that at the time of framing of charge, only prima facie case should be looked into. The benefit of suspicion



cannot be given to the accused at the time of hearing petition u/S 227 Cr.P.C.

Counsel for opposite party No. 2 has appeared and submitted that no illegality has been committed by the court below. The court below has after discussing the materials available in case diary has passed the impugned order. It has further been submitted that trial against the other accused persons has proceeded.

In the written report, there is allegation against this petitioner that he along with other accused persons has taken the cousin brother of the informant on motorcycle and later on, his dead body was found. The police after investigation submitted charge sheet in the case against the opposite party No. 2 and other accused persons on the basis of which, cognizance has been taken under Sections-302, 201, 120B, 34 of the Indian Penal Code and the case has been committed to the court of Sessions.

The court below has in the petition filed u/S 227Cr. P.C. filed on behalf of the opposite party No. 2 discharged the opposite party No. 2 from the offence under Sections-302, 201, 120B, 34 of the Indian Penal Code.

Section-227 clearly lays down as follows:

“Discharge:- 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”.

It is clearly mentioned in the provision u/S 227 Cr.P.C. that the Judge shall discharge the accused persons if the Judge finds not sufficient ground for proceeding against the accused and he will record reasons for doing so.



In the impugned order, the court below has stated that there is no eye witness in the case and mere suspicion has been raised against the accused. Therefore, benefit of suspicion goes in favour of the accused persons. The court below has also mentioned in the impugned order, that this accused along with other co-accused persons has taken the victim to watch orchestra and thereafter, the victim (deceased) was not found alive.

The court below has discharged the opposite party No. 2 after giving benefit of suspicion to the accused, as if he is proceeding in trial. The court below is only required to see at the time of framing of charge whether there is sufficient ground for proceeding against the accused. The court below has mentioned in the impugned order that this petitioner along with other co-accused has taken the victim to watch orchestra and thereafter, the victim was not found alive.

Therefore, this court is of the view that the impugned order is not in accordance with law and the same is fit to be set aside.

Accordingly, the impugned order dated 11-11-2014 passed by the learned Adhoc Additional Sessions Judge-IV, Darbhanga in Sessions Trial No. 450 of 2011 arising out of Manigachi P.S. Case No. 185 of 2008 is set aside. The court below is directed to frame charge against opposite party No. 2 and proceed in trial in accordance with law.

This Cr. Misc. Application is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30-01-2018
Transmission Date	30-01-2018

