

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12985 of 2018

Arising Out of PS.Case No. -72 Year- 1999 Thana -KATRA District- MUZAFFARPUR

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1. Master Abul Bari, son of Late Abdul Gafoor
2. Md. Ujale, son of Master Bari
3. Sitare, son of Badiuzzama
4. Md. Ahmad Ali, son of Badiuzzama
5. Abul Kalam, son of Late Rezaul Haque
All resident of village-Belpakauna, P.S.-Katra, District-Muzaffarpur,
..... Petitioner/s

Versus

The State of Bihar

..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kamran, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 18-08-2018

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

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioners for quashing the order dated 20.09.2017 passed by the learned 2nd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 836 of 2008 whereby and whereunder he has ordered for adding charge under Section 27 of the Arms Act also.

3. The petitioners were made accused in a case registered under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. After completion of investigation, they were sent up for



trial. After taking cognizance of the offences, the case was committed to the Court of Sessions for trial. Initially charges were framed under Sections 302/149, 148 and 147 of the Indian Penal Code only against the petitioners. Subsequently, on 26.04.2017, the prosecution filed an application for addition of Section 27 of the Arms Act to the charges already framed. The court below heard the prosecution and the defence on the application and, vide impugned order dated 20.09.2017, allowed the application preferred by the prosecution and ordered to add charge under Section 27 of the Arms Act to the charges already framed.

4. Assailing the impugned order dated 20.09.2017, learned counsel for the petitioners submitted that the order passed by the court below is erroneous both on facts and in law. He contended that the order has been passed after examination of four prosecution witnesses. He pleaded that there was no sufficient material to prosecute the petitioners for the charge under Section 27 of the Arms Act. He argued that if the order impugned is not set aside, the same would prejudice the case of the defence.

5. On the other hand, learned counsel appearing for the State submitted that Section 216 of the Cr.P.C. provides for addition or alteration to any charge at any stage during trial. Hence, merely because certain witnesses were examined on behalf of the prosecution,



if the trial court found sufficient material to proceed against the accused persons under Section 27 of the Arms Act also, no illegality can be found with the order impugned.

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

7. Section 216 of the Cr.P.C. provides that any court at any stage before judgment is pronounced may alter or add to any charge. The said provision gives ample power to the court to correct an erroneous or improper charge by reframing it properly. It is true that a new charge can be added only if there is material before the court to justify such addition.

8. From perusal of the first information report (for short 'FIR'), as contained in Annexure-1 to this application, it would be evident that the same was instituted, *inter alia*, under Section 27 of the Arms Act. There is allegation that the accused persons had opened fire causing injury to one Abdul Malik, maternal uncle of the informant, in his abdomen as a result of which he died. The allegation made in the FIR was found true during investigation. In view of the FIR, materials collected during investigation including statements of witnesses recorded under Section 161(3) of the Cr.P.C. and the postmortem report, the trial court ought to have framed charge under Section 27 of the Arms Act at the initial stage itself.



9. I further find that charge-sheet was also submitted, *inter alia*, under Section 27 of the Arms Act and cognizance was also taken by the Magistrate for the said offence. Since charge under Section 27 of the Arms Act was not framed initially, it has rightly been added subsequently on the prayer made on behalf of the prosecution.

10. Keeping in mind the discussions made above, I see no merit in this application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-Sanjeev

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.08.2018
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