

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36014 of 2013

Arising Out of PS. Case No.-313 Year-2012 Thana- COMPLAINT CASE District-
Kishanganj

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1. Manish Bihani @ Manish Briyani S/O Kanhaiya Lal Bihani Resident Of Mahabir Marge, P.S And District- Kishanganj
 2. Sanjay Bihani @ Sanjay Kumar Biyani S/O Kanhaiya Lal Bihani Resident Of Mahabir Marge, P.S And District- Kishanganj
 3. Kamal Jain @ Kamal Klumar Jain S/O Chhokamal Jain Resident Of Mahabir Marge, P.S And District- Kishanganj
 4. Mahabir Prasad Jain S/O Late Luxmi Narayan Jain Resident Of Mahabir Marge, P.S And District- Kishanganj
 5. Santosh Jain @ Santosh Kumar Jain S/O Paras Lal Jain Resident Of Shastri Marge, P.S And District- Kishanganj.
 6. Manoj Jain @ Manoj Kumar Jain S/O Paras Lal Jain Resident Of Shastri Marge, P.S And District- Kishanganj.
 7. Sandeep Jain S/O Paras Lal Jain Resident Of Shastri Marge, P.S And District- Kishanganj.
 8. Chunni Lal Jain S/O Paras Lal Jain Resident Of Shastri Marge, P.S And District- Kishanganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Luxmi Prasad Modi S/O Late Sita Ram Modi Resident Of Dharmshala Road, P.S And District- Kishanganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sarangdhar Jha, Advocate
For the Opposite Party/s	:	Mr. Binodanand Mishra, Advocate
		Mr. Hemant Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 20-06-2018

Heard learned counsel for the petitioners and learned counsel appearing on behalf of the Opposite Party.

2. The petitioners have filed the present petition against the order dated 10.6.2013 rejecting their application for discharge.

3. In the present case interim order was passed by this Court on 27.8.2013 staying the further proceedings in the court



below considering the fact that the dispute pertains to right of passage which is civil in nature and as such the present case as framed is prima facie not a criminal case.

4. Mr. Binodanand Mishra, learned counsel appearing on behalf of the opposite party submits that in view of the judgment of the Apex Court in the case of State of Tamil Nadu by Ins. Of Police, Vigilance and Anti Corruption Vs. N. Suresh Rajan & Ors: AIR 2014 SC (Supp) 1982, the Court exercising jurisdiction for discharge under the scheme of the Code of Criminal Procedure is required to see whether there is, prima facie, case or not. In the said judgment the Apex Court has considered the scheme of discharge under Sections 227, 239 and 245 of the Code of Criminal Procedure. The Apex Court has categorically held out that the court has to see at the stage of discharge whether prima facie case is made out or not.

5. In the present case on perusal of the record, it appears that after taking cognizance the court has fixed the case for framing of the charge.

6. Under the scheme of the Code of Criminal Procedure after the materials are placed before the court as framing of charge, the petitioners may be in a position to persuade the court on the



basis of subsequent evidence adduced in Court to take decision for discharge on the ground that no material is available to proceed.

7. learned counsel for the petitioners, on the other hand, submits that in a case of civil dispute the continuance of the criminal proceeding is an abuse of the process and therefore, the court below should have discharged the petitioners.

8. In the totality of the fact situation, the court is of the view that in the instant case after framing of the charge, the parties may lead evidence and at that stage it would be appropriate for these petitioners to file a petition for discharge placing on record the evidence that has come after framing of charge as appropriate material for consideration that no case is made out. In addition thereto, the petitioners would be in a position to persuade the court with reference to the evidence adduced by the parties after framing of charge that the present dispute is essentially a civil dispute.

9. In view of the above, the petition is disposed of with liberty to the petitioners to file a petition for discharge after the evidence are adduced on framing of charges. The court below is expected to consider the application for discharge on collection of evidence on framing of charge in accordance with law on its own merit without being influenced by the fact that the earlier petition for discharge filed by the petitioner was rejected.



10. With the aforesaid, the application stands disposed
of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.06.2018
Transmission Date	23.06.2018

