

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4432 of 2016

Arising Out of PS. Case No.-51 Year-2012 Thana- HARSIDHI District- East Champaran

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Guddu Sharma, son of Tuntun Sharma, resident of Mohalla - Chhatauni,
Barhi Tola, P.S. - Chhatauni, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sanjay Kumar, son of Baldeo Ram, resident of Mohalla- Chhota Bariarpur,
P.S. Chhatauni, District - East Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shakti Suman Kumar, Advocate
For the Opposite Party/s : Mr. Shyam Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
CAV JUDGMENT

Date : 07-12-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.09.2015 passed by the 1st Additional Sessions Judge, East Champaran at Motihari, in Sessions Trial No.315 of 2014 arising out of Harsidhi P.S. Case No.51 of 2012 by which the learned Court below has dismissed the petition filed on behalf of the Petitioner for his discharge.

2. It is alleged in the First Information Report that on 17.02.2012 at 2.00 PM in the afternoon co-accused, Abhishek Patel, and two other persons came to the house of the Informant and took his brother with them on motorcycle on the pretext of attending *Barat*. The Informant got information on



08.02.2012 at 9.00 AM in the morning that dead body of his brother is lying near the bridge. The Informant has alleged that his brother has been killed by Abhishek Patel along with two unknown persons.

3. Counsel for the Petitioner submits that Petitioner is not named in the written report. The family members of the deceased after about a week have alleged that this Petitioner was also accompanying co-accused Abhishek Patel. The Inquest Report was prepared after recovery of the dead body, which shows that death was caused on account of falling from bridge. Postmortem report shows cause of death as head injury. There is no allegation for the offence under Section(s) 3(i)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, but still cognizance has been taken by the learned Court below under aforesaid sections on the basis of charge-sheet submitted by the police.

4. Counsel for the State submits that there is no illegality in the impugned order.

5. This Court finds that the Informant has alleged that on the date of occurrence, co-accused, Abhishek Patel, along with two unknown persons arrived at the house of the Informant, took his younger brother on Hero Honda



motorcycle. He received information on the next day that dead body of his younger brother is lying near the bridge. The Informant has alleged that co-accused, Abhishek Patel, with two unknown has committed murder of his younger brother.

6. Case diary was called for, which has been received.

7. During investigation, police recorded statement of family members of the deceased i.e. wife, mother, father and brother in para 17, 18, 19 and 20. All of them have taken name of this Petitioner of having taken the deceased along with named accused Abhishek Patel. The police has recorded statement of witnesses of inquest report in para 8 and 9 of the case diary, wherein, they have stated that from appearance of the dead body and motorcycle received from the place of occurrence, it appears that deceased was murdered somewhere else and his body has been thrown near under-constructed bridge in water to give colour of his murder to be an accident. Postmortem of dead body was done, which finds mention in paragraph 30 of the case diary, wherein, doctor has found cause of death due to hard and blunt substance.

8. Charge can be framed if *prima facie* material comes against the accused during course of investigation. The



Magistrate is only required to see *prima facie* materials in the case diary at the time of framing of Charge. The Court below is not required to appraise the statement of witnesses available in the case diary in the manner as is done in trial at the stage of hearing petition under Section 227 Cr.P.C.

9. The Judge can discharge the accused under Section 227 Cr.P.C. only when he considers that there is no sufficient ground for proceeding against the accused.

10. It appears from case diary that four witnesses have taken name of this Petitioner during investigation levelling specific allegation against Petitioner of causing occurrence along with named accused Abhishek Patel. The witnesses of Inquest Report have also alleged before the police that from appearance of the dead body, it appeared that dead body was thrown in water after committing murder somewhere else to give colour of accident to the offence of murder. The Doctor in the postmortem report has found cause of death due to injury caused by hard and blunt object.

11. Therefore, this Court finds sufficient material available in the case diary against the Petitioner for framing Charge under Section(s) 302/34 Indian Penal Code.

12. This Court, however, does not find any



material to show ingredient for the offence under Section(s) 3(i)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act either in the First Information Report or in the statement of witnesses recorded in the case diary during investigation. From the case diary, it appears that on the basis of report of Superintendent of Police, as mentioned in para 63 of the original case diary, charge-sheet has been submitted against the Petitioner for the offence under Section(s) 3(i)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act also along with Section(s) 302/34 Indian Penal Code.

13. This Court on the basis of allegation in the written report and the materials available in the case diary does not find any ingredient for the offence under Section(s) 3(i)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

14. Therefore, this Court does not find any illegality in the impugned order passed by the learned Court below with regard to materials having been found in the case diary to frame Charge against the Petitioner for the offence under Section(s) 302/34 Indian Penal Code. However, this Court does not find sufficient material in the case diary to frame charge under Section 3(i)(x) of the Scheduled Castes & Scheduled



Tribes (Prevention of Atrocities) Act.

15. In view of such, the Court below has committed illegality in coming to conclusion that there are sufficient material to frame charge against the Petitioner for the offence under Section 3(i)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

16. Accordingly, the impugned order dated 30.09.2015 passed by the 1st Additional Sessions Judge, East Champaran at Motihari, in Sessions Trial No.315 of 2014 arising out of Harsidhi P.S. Case No.51 of 2012 is hereby set aside in part to the extent indicated above.

17. The Court below will proceed against the Petitioner in the case after framing Charge against him for the offence under Section(s) 302/34 Indian Penal Code.

18. This Criminal Miscellaneous Application is, accordingly, allowed in part.

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	AFR
CAV DATE	18-09-2018
Uploading Date	09-12-2018
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