

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23043 of 2015

Arising Out of PS.Case No. -2296 Year- 2009 Thana -SARAN COMPLAINT CASE District-
SARAN

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Suman Mallah @ Suman Prasad & Anr

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandra Mohan Jha

For the Opposite Party/s : Mr. Sangita Sharma (App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

3 26-03-2018 Heard the learned counsel for the petitioners and the

learned counsel for the State.

The present petition has been filed for quashing the
order dated 17.04.2015 passed by the learned ADJ V, Saran,
whereby the petition of discharge filed under Section 227 of the
Cr.P.C. has been rejected.

Learned counsel for the petitioners has submitted that
the police after investigation has submitted final form in the case.
Learned Magistrate, on the basis of protest petition, has taken
cognizance against the petitioners for the offence under Sections
302/34 of the Indian Penal Code and 27 of the Arms Act. The court
below has rejected the discharge petition without properly
appreciating the evidence brought by the police during the
investigation.

Learned Additional P.P. submits that there is no



illegality in the impugned order.

This Court is of the view that court below is required to see the material against the accused during enquiry under Section 202 of the Cr.P.C. and frame charge on the basis of aforesaid material. The court below is not required to see the material which is available in the case diary.

Learned counsel for the petitioners has submitted that the protest petition has been filed by informant after submission of final form by the police. Therefore, the impugned order be quashed. The learned Magistrate gets independent jurisdiction to proceed in the matter and hold inquiry under Section 202 of the Cr.P.C. The enquiry held by the learned Magistrate on such complaint is independent enquiry and it is not dependent in any manner on the evidence which was brought by the police earlier during course of investigation of the case in the case diary on the basis of which the police had submitted final form. The Magistrate has independent jurisdiction to proceed with the matter on the basis of the protest petition treating the same as complaint under Section 202 of the Cr.P.C. and that enquiry will be independent enquiry. The Magistrate will have jurisdiction to proceed in the case on the basis of material brought before the court during S.A. of the complainant and statement of other witnesses recorded during enquiry under Section 202 of the Cr.P.C.



Learned Sessions Judge has mentioned in the impugned order that the court is required to see only the material brought during enquiry under Section 202 Cr.P.C. The learned Magistrate has found prima facie case against accused persons for the offence under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act. It has further been mentioned in the impugned order there are sufficient material in the case for framing charge.

Report with regard to current stage of trial was called for, which has been received. The court below has mentioned in the report that charge has been framed in the case.

Therefore, this Court does not find any justifiable reason to interfere with the impugned order. Accordingly, the Cr. Misc. petition is dismissed.

The court below is directed to proceed with the trial in accordance with law.

(Sanjay Priya, J.)

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