

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.891 of 2016

Arising Out of PS. Case No.-55 Year-2015 Thana- WARISNAGAR District- Samastipur

Amarjeet Yadav son of Kishun Yadav, resident of village- Jakhara, P.S.-
Kalyanpur, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kr. Thakur, Advocate

For the Opposite Party/s : Mr. Nawal Kishore Pd. APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

This petition under Section 482 Cr. P. C. has been filed for quashing the order dated 10.11.2015 passed by the learned Additional District and Sessions Judge-IV, Samastipur in Sessions Trial no. 382 of 2015 arising out of Warisnagar P.S. case no. 55 of 2015 by which learned court has dismissed the discharge petition filed on behalf of the petitioner under Section 227 Cr. P.C.

Heard learned counsel for the petitioner and the State.

Learned counsel for the petitioner has submitted that mere suspicion has been raised against this petitioner in the FIR. Police after investigation has submitted charge sheet merely on suspicion. There was no sufficient material in this case to proceed against this petitioner. He has relied on a decision reported in **2010 Cr. L.J (S.C.) 1427 P. Vijayan vs. State of Kerala & Anr.**

The Hon'ble Supreme court in the aforesaid judgment has held that "Judge is not a mere post office to frame the charge at the



behest of prosecution. The court has to exercise his judicial mind to facts of case in order to determine whether a case for trial has been made out by prosecution. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of evidence recorded by the police or the documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame charge against him”.

Learned counsel for the State, on the other hand, has submitted that petitioner is named in the written report. There is specific allegation levelled by the informant against the petitioner. Police after investigation has submitted charge sheet against him.

In the FIR, it is alleged by the informant that this petitioner and deceased were friends. This petitioner often used to come to his house and his son (since deceased) had also gone to his house. There was money transaction between them. It is also alleged that the petitioner often used to call his son in the night for which the informant raised objection. The informant and his son after taking meal went to sleep on 16.3.15 and at about 5.30 AM when he reached at his *Bathan*, he did not find his son. He made search and also tried to contact on the mobile phone of his son which was found switched off. During course of search, he learnt that dead



body of a youth is lying on the road. The informant along with villagers reached there and found the dead body of his son. There was injury on the back of the head and neck by sharp weapon. The neck was tied with clutch wire. The informant has further alleged that he made telephone call on the mobile phone of this petitioner but he did not give any clear reply with regard to the aforesaid occurrence. The Informant has levelled allegation against this petitioner that for giving and taking of money his son had been killed by this petitioner. Police after investigation has submitted charge sheet against this petitioner.

The learned Sessions Judge, Samastipur has mentioned in the impugned order that there are sufficient materials in the case diary against this petitioner to frame charge in the case.

Section 227 Cr. P.C. speaks as under:-

227. 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.”

In this manner, from plain reading of Section 227 Cr. P.C. it appears that accused will be discharged if the judge considers that there is not sufficient ground for proceeding against the petitioner.

In the instant, case, this Court finds that petitioner is named in the written report. The informant has levelled specific allegation against this petitioner although it may be in the form of suspicion. The police after investigation has found the allegation levelled by the



informant to be true and thereafter submitted charge sheet. The Hon'ble Supreme Court in judgment reported in **2010 Cr. L.J (S.C.) 1427 (supra) has held that** the sufficiency of ground would take within its fold the nature of evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. Therefore, this Court does not find any illegality in the impugned order.

This Cr. Misc. petition is, accordingly, dismissed.

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

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	24.9.2018
Transmission Date	24.9.2018

