

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5506 of 2016

Arising Out of PS. Case No.-259 Year-2009 Thana- BIDUPUR District- Vaishali

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1. BIMLA DEVI WIFE OF RAM LOCHAN SINGH.
 2. RAM LOCHAN SINGH SON OF LATE RAM NAGINA SINGH.
BOTH ARE RESIDENT OF VILLAGE-KULHARIYA, POLICE
STATION-KOILWAR, DISTRICT -BHOJPUR AT PRESENT
QUARTER NO.251, A/B/C/ NEW RAILWAY COLONY,
KHAGAU, POLICE STATION-KHAGAU, DISTRICT-PATNA.

... .. PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. VIDYA SINGH, WIFE OF MANOJ KUMAR SINGH, D/O SRI
KAILASH SINGH, RESIDENT OF VILLAGE-BIDUPUR
KATAHARIYA, POLICE STATION-BIDUPUR, DISTRICT-
VAISHALI (HAZIPUR).

... .. OPPOSITE PARTY/S

Appearance :

For the Petitioner/s	:	Mr. Krishna Pd. Singh, Sr. Adv. Mr. Arvind Kumar Pandey
For the State	:	Mr. P.K.Pandey, APP
For the informant	:	Mr. Yogesh Chandra Verma, Sr. Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 **22-11-2018** Heard learned counsel for the petitioner, learned

Additional Public Prosecutor along with learned counsel for the

informant.

Against an order dated 07.01.2016 passed by

Additional Sessions Judge, IIIrd, Vaishali at Hajipur in Sessions

Trial No.144 of 2014 whereby and whereunder prayer of the

petitioner to discharge under the agis of 227 of the Cr.P.C. has

been rejected, compelled the petitioners to challenge the same

by way of instant petition.

Manifold argument has been raised in order to



challenge the finding having recorded by the learned lower court. The first and foremost happens to be petitioners were not sent up for trial but, differing therefrom the learned lower court summon the petitioners. That being so, whatever been alleged at an initial stage against the petitioners who are old, infirm ailing father-in-law as well as mother-in-law of the informant and further, did not carry specific allegation. Apart from this, it has also been submitted that there happens to be no substance collected by the Investigating Officer in order to justify prosecution under Section 313 of the IPC. So, the materials whatever been collected and existing on the record under the guise of Section 173 Cr.P.C. happens to be sufficient to nigate the allegations at the end of the prosecution and for that, referred para-35, 40, 49 and 53 of the case diary.

The learned Additional Public Prosecutor while opposing the prayer has submitted that learned lower court, as is evident from the order impugned had taken into account the materials having collected by the Investigating Officer and referred paragraph 8, 11, 12, 13 and 25, the statement of the respective witnesses identifying complicity of these two petitioners along with others during course of commission of an occurrence.



The parameter of mode of appreciation of the materials at the stage of 227 of the Cr.P.C. has elaborately been dealt with by the Apex Court in **Amit Kapoor vs. Ramesh Chander & Anr.** reported in **(2012) 9 SCC 407** whereupon, it has been observed as follows:

“Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the ‘record of the case’ and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

Gone through the case diary. From perusal of the same, it is evident that learned lower court rightly took into consideration the relevant paragraphs so incorporated in the order impugned which did justify the finding so recorded by the



learned lower court. Consequent thereupon, instant petition sans merit and is accordingly dismissed. The stay so granted vide order dated 04.03.2016 is hereby vacated.

(Aditya Kumar Trivedi, J)

Prakash Narayan

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