

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.25300 of 2017**

Arising Out of PS.Case No. -27 Year- 2014 Thana -BELSAND District- SITAMARHI

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Subhash Kumar Singh @ Subhash Kumar son of Rajeshwar Singh, resident of village-Manchi, P.S.-Manchi, P.S.- Belsand, District- Sitamarhi.

.... .... Petitioner/s

Versus

The State of Bihar

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. R.K.Sharma, Sr. Advocate

: Mr. L.K.SSharma, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 27-03-2018**

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 30.03.2017 passed by the learned Sessions Judge, Sitamarhi in Sessions Trial No.570 of 2016 arising out of Belsand P.S. Case No.27 of 2014 whereby the application filed by the petitioner under Section 227 of the Cr.P.C. for discharge has been rejected.

2. The plea of the petitioner is that in course of investigation culpability of the petitioner was not found true and, thus, he was not sent up for trial, but differing with the opinion of the investigating agency, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. The



contention is that in absence of direct or indirect evidence against the petitioner putting him on trial for serious offences under Section 364 and 302 of the Indian Penal Code would be an abuse of process of the court.

**3.** Per contra, learned counsel for the State submitted that at the stage of framing of charge, the learned Sessions Judge considered the submissions made on behalf of the petitioner and after appreciating the evidence available on record found sufficient ground for presuming that the petitioner had committed the offence along with other accused persons.

**4.** I have heard learned counsel for the parties and perused the record.

**5.** It would be manifest from the impugned order dated 30.03.2017 passed by the learned Sessions Judge that he has taken into consideration the statements of the witnesses recorded in paragraphs 127, 128, 129 and 130 of the case diary in order to come to a conclusion that there is sufficient ground for presuming that the petitioner was involved in commission of kidnapping and murder of the deceased. Merely because the investigating agency had not sent up the petitioner for trial, it cannot be said that there is no ground for putting the petitioner on trial. It is well settled position in law that the court is not bound by the opinion expressed by the investigating



officer while submitting the report under Section 173 (2) of the Cr.P.C. Since the Court of Magistrate found prima facie evidence against the petitioner in the case diary, it had rightly differed with the opinion of the police officer and summoned the petitioner to face trial. Moreover, the order of cognizance is not under challenge before this Court in the present matter. So far as the impugned order is concerned, no illegality in the order passed by the court below could be pointed out by the petitioner.

6. In that view of the matter, I see no merit in this application. It is dismissed, accordingly.

**(Ashwani Kumar Singh, J)**

Md.S./-

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