

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6804 of 2016

Arising Out of PS.Case No. -97 Year- 2014 Thana -BARSOI District- KATIHAR

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1. KISHORE KUMAR JAIN @ KISHORE JAIN Son of late Sanpat Lal Jain
 2. Raj Kumar Bhagat son of late Krishna Bhagat Both Resident of Village Barsoi Bazar, P.s Barsoi, Distt Katihar.
 3. Shah Alam son of Md. Sadriuddin
 4. Shafikul@Md. Safikul son of Md. Pardhan Both Resident of Village Jeetwarpur, P.s Ajam Nagar, District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Naresh Rajak son of Late Lakhan lal Rajak Resident of Village- Barsoi Bazar, P.s Barsoi, District Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Najeeb Ahmad, Advocate

For the Opposite Party/s : Mr. Anita Kumari (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 25-10-2018 Heard learned counsel for the petitioners as well as learned APP.

2. Report is available having been transmitted at the end of learned lower court wherefrom it is evident that four witnesses have already been examined.

3. Learned counsel for the petitioners has referred the judgment of the Hon'ble Apex Court dated 02.04.2018 passed in Cr. Appeal No. 573/2018 arising out of SLP (Crl) No. 3542/2018 on this score that even after examination of the witnesses, the legality/illegality of the framing of charge against an accused could be seen.



4. After going through the aforesaid judgment, it is evident that it was a case launched at the behest of a hapless wife who has been subjected to cruelty and harassment at the end of her husband, mother-in-law as well as brother-in-law. The appellants of aforesaid appeal were none of them. The victim on her own had stated that because of the fact that they have not intervened by way of scolding her husband to allow her to enjoy her marital life, therefore, she became angry with them and on account thereof, they were named irrespective of the fact that they have not done anything and in the aforesaid background, the Hon'ble Apex Court had an occasion to interfere.

5. It has been submitted at the end of petitioners that from the order impugned, it is evident that plea of alibi is found duly substantiated by one of the witnesses whose statement has been recorded under paragraph-39 of the case diary. It has also been submitted that learned lower court had not taken into consideration nor dealt with the materials if any, available in the case diary in order to justify the presence of prima facie materials against the petitioners rather, from perusal of the operative portion of the order, it is evident that learned lower court had swayed away therefrom and further, gone adverse to the petitioners only in the background of the fact that charge-sheet has been submitted as



per direction of the supervising authority. That being so, there happens to be apparent error committed at the end of the learned lower court while rejecting the prayer of the petitioner.

6. Learned APP opposed the prayer.

7. In *Amit Kapoor v. Ramesh Chander* as reported in (2012)9 SCC 460, it has been held:-

17. 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.

8. Because of the fact that during course of consideration of discharge/framing of charge, as held above, even



lesser than *prima facie* case is to be seen, coupled with subsequent development whereunder four witnesses have already been examined, did not fine favour, whereupon, instant petition is dismissed.

(Aditya Kumar Trivedi, J)

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