

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6002 of 2016

Arising Out of PS.Case No. -204 Year- 2011 Thana -HISUA District- NAWADA

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1. MD. BASIM RAJA @ MD. BABLU @ BABLU S/O MD. JAHANGIR.
 2. MD. JAHANGIR @ MD. JANHANGIR S/O LATE IDRIS KHALIFA.
 3. MD. SHAMIM @ RAJA @ GUDDU S/O MD. JAHANGIR. All are
 resident of village- Munshi Tola Hissua, Police Station Hisua, District-
 Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. Najrana Khatoon Wife of late Jamuna Khalifa, Resident of Village/
 Mohalla Khankhanapur Nalapar, Police Station Hisua, District Nalanda

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishor Prasad-Advocate

For the Opposite Party/s : Mr. R.S. Chaudhary-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 12-10-2018

Heard learned counsel for the petitioners as well as
 learned Additional Public Prosecutor.

The learned lower Court is reminded on account of
 non-compliance of order dated 05.10.2018 and is further, directed
 that in case of recurrence in future, will be viewed seriously.

On account of refusal of a prayer having made on
 behalf of petitioners under Section 227 of the Cr.P.C. by the
 Additional Sessions Judge-IIrd, Nawada in Sessions Trial No.02
 of 2014/ 56 of 2014 vide order dated 01.09.2015, led filing of
 instant petition.

Contention on behalf of the petitioners is that parties



were consenting one and in the background of dispute over negotiation/ settlement of marriage, this case has falsely been instituted. As such, order impugned is fit to be set aside.

Learned Additional Public Prosecutor opposed the same.

So far, mode of consideration of the materials during course of framing of charge is concerned, it has been held by the Hon'ble Apex Court in ***Amit Kapoor vs. Ramesh Chander and another reported in 2012 (9) SCC 460***, as follows:-

“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.

Accordingly, instant petition sans merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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