

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39094 of 2017

Arising Out of PS.Case No. -142 Year- 2016 Thana -MAGADH MEDICAL COLLEGE District-
GAYA

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1. Sanjeev Kumar Son of Rajdeo Singh
2. Nilam Prasad Wife of Rajdeo Singh
3. Rajdeo Singh Son of Late Chuhi Singh
All are resident of Road No. 9, Magadh Colony, Police Station-Magadh
Medical, District-gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. Neha Narayan Daughter of Devendra Narayan, Resident of House No.
17, A.P. Colony, Police Station-Rampur, District-Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2

For the Opposite Party/s : Mr. Sri Arun Kumar Singh -5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 11-09-2018 The petitioners in the present case are challenging the order dated 07.07.2017 passed by learned Sub Divisional Judicial Magistrate, Gaya, in G.R. Case NO. 3518 of 2016, Trial No. 3074 of 2017. By the impugned order. a petition for discharge under Section 239 of the Code of Criminal Procedure filed on behalf of the petitioners has been rejected.

Learned counsel for the petitioners submits that from perusal of the impugned order it will appear that the learned S.D.J.M has not at all applied his judicious mind to the materials available on the record and despite there being a contention of the petitioners that there is not a single independent witness who has



supported the allegations against these petitioners, the petition for discharge has been rejected by simply stating that all the witnesses named in the case diary have fully supported the version of the prosecution.

Learned counsel submits that the stage at which the cognizance is taken and summons are issued to an accused cannot be a guiding factor for the purpose of considering the application for discharge. It is a different stage at which the considerations are required to be given to the materials available on the record and only when it is found that there are sufficient materials indicating availability of the ingredients of the offences alleged against the petitioners, the application could have been rejected. No such exercise has been done in the present case.

Learned counsel representing the opposite party submits that the order dated 07.07.2017 is legal and justified. It is submitted that the learned S.D.J.M is not required to examine threadbare the entire materials on record at this stage and it is not for him to see whether the materials would ultimately lead to convictions of the accused or not. It is also submitted that there are specific allegations against the petitioner Rajdev and it has been alleged that he had received Rupees Eight Lacs in his account through cheque.



Having heard learned counsel for the parties and on perusal of the records, this Court finds that whatever be the allegations against the petitioners at least impugned order dated 07.07.2017 does not indicate any consideration of the materials available on the record. The learned S.D.J.M. has narrated the facts as to how the case was registered, was investigated, charge-sheet was filed and then the cognizance was taken, but having said so at this stage when he was required to consider the materials available on the record to find out whether there are sufficient materials to frame charge against the petitioners, he has not made any consideration.

In the aforesaid view of the matter, the order dated 07.07.2017 is held to be unreasoned order and is quashed, accordingly. The learned S.D.J.M. shall now consider the petition under Section 239 Cr.P.C. afresh and shall decide the same after giving an opportunity of hearing to all the parties in accordance with law.

The application stands allowed to the extent indicated hereinabove.

Arvind/-

(Rajeev Ranjan Prasad, J)

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