

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11905 of 2015

Arising Out of PS. Case No.-168 Year-2007 Thana- BHORE District- Gopalganj

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1. Satendra Kumar Shahi, S/o Late Umarav Shahi, R/o village- Baraitha, P.S. - Vijaipur, Distt. Gopalganj.
 2. Dinesh Pandey, S/o Late Bishwanath Pandey, R/o village- Sukulwa Kala, P.S.- Gopalganj, District- Gopalganj.
 3. Vijay Bahadur Singh @ Vijay Singh S/o Jageshwar Singh.
 4. Ramdeo Singh S/o Late Jaimangal Singh.
- Petitioner/s

Versus

1. State of Bihar.
 2. Banwari Yadav @ Banwari Chaudhary, S/o Late Swaroop Yadav R/o Village- Balwa, P.S.- Bhore, Distt.- Gopalganj.
- Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Yogendra Prasad Sinha, Advocate
For the Opposite Party/s	:	None
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 15-02-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That, this is an application for
quashing the order dated 23.12.2014 passed by
Sri Ashish Mishra Judicial Magistrate Ist Class,
Gopalganj in Tr. No. 3526/2015 arising out of
Bhore P.S. Case No. 168/2007 by which he has
dismissed the application of the petitioners which
was filed u/s 239 of Cr.P.C. for discharge the*



petitioners from the charge considering away the face value of F.I.R. as well as material of the case diary and evidence which is available on record of the Court.”

3. The opposite party no. 2 had filed Bhore P.S. Case No. 168 of 2007 on 14.10.2007, in which after investigation the police submitted chargesheet against the petitioners and the Court has taken cognizance under Sections 420/406/379/34 of the Indian Penal Code. The petitioners thereafter filed an application under Section 239 of the Code dated 28.02.2013 for their discharge. The same has been rejected by order dated 23.12.2014.

4. Learned counsel for the petitioners submitted that the order impugned is perfunctory and, thus, on this ground alone, it requires to be set aside. It was submitted that it is incumbent upon the Court to consider whether or not there is ground for presuming the commission of offence by the accused and without fully advertent to the material on record it must not blindly adopt the decision of the prosecution. For such proposition, reliance was placed on the decision of a co-ordinate Bench of this Court in **Nemai Chandra Chatterjee v. State of Bihar** reported as **2006(3) PLJR 114**.

5. Learned A.P.P. submitted that the rejection is quite sound in law for the reason that the petition filed on behalf of the petitioners itself was perfunctory and even factually erroneous



without any material produced in support of such plea. It was submitted that only if a person raises a specific issue before a Court, the Court is obliged to consider the same but when there is no plea in the application and there being no material to substantiate as to whether any other plea was raised, the order passed by the Court cannot be faulted.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the application. The contention of learned A.P.P. is correct that before the Court the petition which was filed was thoroughly inadequate and perfunctory and also factually incorrect to the extent that the same states that cognizance was taken only under Section 379 of the Indian Penal Code, whereas the fact is that cognizance had been taken on 17.01.2008 under Sections 420/406/379/34 of the Indian Penal Code and Section 239 of the Code. Further, the Court does not find that there is any material to substantiate or even indicate what points were raised before the Court below, both on facts as well as in law so as to be in a position to come to the conclusion as to whether the contention of learned counsel for the petitioners is correct. In absence of there being anything in the pleadings or even otherwise, this Court finds that the Court below was not



obliged to note in detail the materials on record. Thus, the Court recording that it has gone through the records, the petition filed on behalf of the petitioners and the rejoinder submitted on behalf of the prosecution and then holding that there was sufficient material against the petitioners for framing of charge, in the background that the petition filed by the petitioners on 28.02.2013 under Section 239 of the Code, which was totally perfunctory and even factually erroneous, the order impugned cannot be said to be legally infirm. Moreover, earlier, by order dated 12.09.2011, a co-ordinate Bench, in Criminal Miscellaneous No. 12658 of 2008, which was filed by the petitioners for quashing of the present F.I.R., without interfering, had disposed off the case with option to raise all the points at appropriate stage.

7. As far as the decision of a co-ordinate Bench in **Nemai Chandra Chatterjee** (supra) is concerned, the Court finds that though the principle cannot be questioned, but in the facts and circumstances of the present case, unless there is a specific plea, both on facts as well as in law taken before the Court, the Court is not obliged on its own to consider the petition for discharge. Further, the Court in **Nemai Chandra Chatterjee** (supra) has also held at paragraph no. 4 that if a Magistrate discharges any accused under Section 239 of the Code, he has to give reasons for the same



and if he frames charge as provided under Section 242 of the Code he is not required to give any reason for the same. Thus, in the present case, if the Court below had found substance and had interfered and discharged the petitioners then it was obliged to give reasons but not if it proposed to frame charges against them, as has been done.

8. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

P. Kumar

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