

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13549 of 2017

Arising Out of PS. Case No.-98 Year-2008 Thana- NAUBATPUR District- Patna

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Rakesh Kumar @ Tullu @ Rakesh Singh @ Tullu Singh S/o Braj Nandan Singh, R/Village- Sahar Rampur, P.S.- Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Geeta Devi, Wife of Baijnath Singh, resident of Village- Sahar Rampur, P.S. Naubatpur, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar

For the Opposite Party/s : Mr. Mithilesh Kumar Khare

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 09-12-2019

The present petition has been filed for quashing the order dated 29.11.2016 passed in Sessions Trial No. 990 of 2013, arising out of Naubatpur P.S. Case No. 98 of 2008, whereby and where-under the learned A.D.J. VI, Danapur has rejected the application of the petitioner filed for discharge under Section 227 of the Cr. P. C.

2. The brief facts of the case are that on the basis of fardbeyan of the informant, namely, Gita Devi, an FIR bearing Naubatpur P.S. Case No. 98 of 2008 dated 24.03.2008 was registered by the police. In the said fardbeyan, the informant has alleged that on 24.03.2008 at about 1:00 in the day time, his son was going to his poultry farm after having his meal and



when he reached in front of the house of one Mithilesh Singh, the accused persons including the petitioner herein, armed with pistol, had caught the son of the informant and the co-accused person, namely, Mithilesh Singh had fired gun shot on the person of the son of the informant, resulting in him being injured. Initially the FIR was registered under Sections 147, 148, 149, 342, 324, 307 of the Indian Penal Code and Section 27 of the Arms Act, but later on, after his death, the same was converted under section 302 of the Indian Penal Code.

3. The learned counsel for the petitioner has submitted that the petitioner is innocent and has been falsely implicated in the present case on account of local politics. It is further submitted that the police, after thorough investigation, had submitted final form as no hand of the petitioner was found in the alleged occurrence. It is also submitted that barring the statement of the opposite party no.2 in the FIR, there is no specific allegation of any overt act as against the petitioner herein resulting in there being no material to suggest the complicity of the petitioner in the alleged occurrence. Lastly, it is submitted that in connection with the same Naubatpur PS Case No. 98 of 2008, another Sessions Trial No. 230 of 2010 is being conducted wherein the informant, who has been



examined as P.W. 1, her daughters, who have been examined as P.W. 2 and P.W. 3 as also her son-in-law, who has been examined as P.W. 6, have not whispered a word about participation of the petitioner in the alleged occurrence, hence the learned court below ought to have allowed the petition filed by the petitioner under Section 227 Cr. P. C. for discharge.

4. I have heard the learned counsel for the parties and perused the material on record as also have gone through the impugned order dated 29.11.2016 and I find that this is not a case where the learned court below, in the impugned order dated 29.11.2016, has not found any material as against the petitioner herein so as to discharge the petitioner and not proceed against him inasmuch as it is apparent from the impugned order that the learned court below had perused the case diary and found ample materials against the petitioner herein in paragraphs no. 2, 4, 5, 37 and 38 thereof and also the petitioner is a named accused in the FIR along with other accused persons and is stated to have taken active part in the alleged occurrence.

5. At this juncture, it would be relevant to mention here that it is a well settled law that the Courts should be slow in interdicting the trial against the accused persons and the



accused persons should be discouraged from protracting the trial and preventing culmination of the criminal cases by resorting to uncalled for and unjustified litigation. It is equally a well settled law that at the stage of framing of charge under Section 228 Cr.P.C. or while considering the discharge petition filed under Section 227 Cr.P.C., it is not for the Magistrate or the Judge concerned to analyze all the materials including the pros and cons, reliability or acceptability etc. and the learned Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents at the time of trial and take a decision one way or the other. Thus, the court below has to be prima facie satisfied as to whether there is sufficient ground for proceeding against the accused and at the stage of considering the discharge petition under Section 227 Cr.P.C., the standard of test, proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied inasmuch as the prosecution evidence is yet to commence.

6. It is equally a trite law that the evidence led during the course of another trial cannot be used for the purposes of a different proceeding, hence the contention of the petitioner that the evidence led by various witnesses in Sessions Trial No. 230



of 2010 would show that the said witnesses had not named the petitioner as the person who had participated in the alleged occurrence, is fit to be rejected since such evidence cannot be used in the present case.

7. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, including the settled principle of law on the subject matter in question, this Court does not find any infirmity in the impugned order dated 29.11.2016 passed by the learned court of ADJ-VI, Danapur in Sessions Trial No. 990 of 2013, so as to interfere with the same, hence the present petition stands dismissed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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