

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31111 of 2011

Manoj Singh S/O Baidyanath Singh R/O Vill- Shvanraj, P.S- Bariya, Distt-
BaluaU.P

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 27362 of 2011

Mithilesh Kumar S/O Ganesh Prasad Singh R/O Vill.- Kurwan,P.S.- Goh,
Distt.- Aurangabad, At Present Residing At Ashok Nagar Road No.-5, Distt.-
Patna

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 31217 of 2011

Sudhakar Prasad Singh S/O Late Chandra Shamsheer Prasad Singh Resident
Of Village Jogiara, P.S. Jalley, Distt. Darbhanga.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 31111 of 2011)

For the Petitioner/s : Mr.Ramakant Sharma

Mr. Nagendra Kumar Singh

For the State : Mr.Jharkhandi Upadhyay, APP

(In CRIMINAL MISCELLANEOUS No. 27362 of 2011)

For the Petitioner/s : Mr.Nagendra Kumar Singh

Mr.Ramakant Sharma

For the Opposite Party/s : Mr.Jharkhandi Upadhyay, APP

(In CRIMINAL MISCELLANEOUS No. 31217 of 2011)

For the Petitioner/s : Mr.Ramakant Sharma

Mr.Nagendra Kumar Singh

For the Opposite Party/s : Mr.Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 28-03-2019

Heard learned counsel for the petitioners and



learned A.P.P for the State.

2. The petitioners have moved this court under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') assailing the order dated 15.07.2011 passed by learned Additional Sessions Judge II, Hajipur in Sessions Trial No. 164 of 2004 arising out of Bhagwanpur (Vaishali) P.S. Case no. 91 of 2001 by which petition filed by them for discharge under section 227 of the Code has been rejected.

3. Petitioners are accused in a case of twin murder and kidnapping.

4. Learned counsel for the petitioners submitted that some of the petitioners were not named in the First Information Report whereas with regard to others also, there is no direct evidence and their names came during the confessional statement of some co-accused and the same also merely raises a finger of suspicion. Learned counsel submitted that as far as the petitioner- Mithlesh Kumar is concerned, he was not posted at the place where the victims were posted and only because the wife of one victim expressed that Mithlesh Kumar was aggrieved by his transfer and held her husband responsible, he has been implicated in this case. Learned counsel submitted that



mere presumption of there being some involvement of a person in a crime would not take the place of materials, as required in law, to justify such person facing trial. Learned counsel submitted that with regard to framing of the charge, the Hon'ble Supreme Court in **Jaharlal Das v. State of Orissa**, reported as **(1991) 3 Supreme Court Cases 27**, the relevant being at paragraphs 9 and 11, has held that the Court has to bear in mind a caution that in cases depending largely upon circumstantial evidence there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion howsoever strong cannot be allowed to take the place of proof and further that the Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. Learned counsel submitted that even while framing of the charge, it is the duty of the Court to see that there is ample material before the Court so as to justify even presuming involvement of the accused. For such proposition, learned counsel referred to the decision of the Hon'ble Supreme Court in **Vinay Tyagi v. Irshad Ali**, reported as **(2013) 5 Supreme Court Cases 762**, the relevant being at paragraphs 16 to 19.



5. learned counsel for Sudhakar Prasad Singh submitted that he has absolutely no role in the entire incident and only because of another accused Kundan with whom it is alleged that he had some connection and to whom he gave shelter, the police has also implicated him. Learned counsel submitted that there is neither any direct nor circumstantial evidence against him and only on a tenuous ground, implicating him and framing of the charge to face trial is abuse of the process of the Court.

6. With regard to petitioner Manoj Singh, learned counsel submitted that the only ground on which he has been made accused is because he is brother-in-law of co-accused Kundan Singh. Learned counsel submitted that just because of such relationship, the petitioner having to face trial would be a mockery of the entire judicial process and, thus, the Court should interfere. Learned counsel drew the attention of the Court to the investigation carried out by the Special Investigation Team into the episode which has found the involvement of renowned criminal Pappu Dev in the incident and has also indicated that there may have been rivalry between the officers of the Registration Department in the district of Muzaffarpur on account of huge transaction of illegal



gratification.

7. Learned counsel submitted that keeping in mind the aforesaid, petitioners deserve to be discharged, as based on the materials before the Court, there cannot be any conviction as no evidence admissible in law has been produced, either by the investigation or by the witnesses who have come forward and whose statements have been recorded by the police. Learned counsel relied upon the decision of a Bench of this Court in **Kailash Sah vs. the State of Bihar**, reported as **2006 (4) PLJR 23**, the relevant being paragraphs 6 to 8, for the proposition that a person can be charged to substantiate an offence only if there is any material and one test that can be adopted in such cases is if the statement as recorded under Section 161 of the Code is taken to be correct in its entirety, whether that would be sufficient to uphold the charge.

8. Learned A.P.P., upon going through the police papers, submitted that against Mithlesh Kumar, many witnesses have stated that he had strong reason to be involved in the conspiracy. With regard to others, it was submitted that witnesses have stated that Manoj Singh and Sudhakar Prasad Singh were close to co-accused Kundan Singh and provided shelter to him. He submitted that if an accused is given



protection, the person giving such protection cannot be said to be innocent so as to discharge him and prevent him from going through a full-fledged trial. Learned counsel submitted that the angle of conspiracy has to be proved at the time of trial, based on the evidence and materials brought before the Court, and such stage has not yet come, thus it is all the more imperative that a full-fledged trial in the present case may continue, in which the petitioners shall have full opportunity of producing their defence.

9. 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 applications. As has rightly been pointed out by learned A.P.P., that there being statement of witnesses, which may not be taken as clinching proof for the present, suggest a role of the petitioners and indicates more than prima facie probability of their involvement. Further, as there is direct nexus of the genesis for the crime, which even as per the Special Investigation Team, revolves around dispute relating to apportionment of illegal gratification, involvement of the petitioners cannot be said to be totally unfounded, as in some way or the other, they were adversely affected by the circumstances prevailing at that time.



10. Coming to the decisions referred to and relied upon by the learned counsel for the petitioners, the Court would only observe that there cannot be any issue with regard to the principle of law relating to framing of charge and presumption not taking place of proof, however, the only distinction the Court would make is that all such things have to be gone into at the stage of trial, where the evidence and materials shall be placed before the Court, in accordance with law, and a definite conclusion can be arrived at and finding recorded by the Court. Such stage has not yet come. The petitioners thus, would have full opportunity to place their defence before the Court at the time of trial.

11. For reasons aforesaid, the applications stand dismissed. Before parting, the Court would only indicate that the observations made in the order are only for the purpose of considering the present applications and the same shall not prejudice any side at the time of trial.

12. The documents received from the Court below be returned forthwith.

(Ahsanuddin Amanullah, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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