

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43178 of 2019

Arising Out of PS. Case No.-29 Year-2013 Thana- AIRPORT District- Patna

1. RAJ NARAYAN SHARMA Son of Deonandan Sharma Resident of Village - Kusumpur, P.S.- Rupaspur, Dist.- Patna.
2. Avinash Kumar Sharma Son of Prabhakar Sharma Resident of Village - Isopur, P.S.- Phulwari Sharif, Dist.- Patna.
3. Satyendra Sharma Son of Sri Deo Kumar Mistri Resident of Village - Lalu Nagar, Rukunpura, P.S.- Rupaspur, Dist.- Patna.
4. Surya Narayan Prasad Son of Damodar Sharma Resident of Village - Mathurapur, P.S.- Barish Nagar, Dist.- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Madan Mohan Prasad, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 06-08-2019 The petitioners have sought quashing of the order dated 02.05.2019 passed by the learned Additional Sessions Judge-XII, Patna in Sessions Trial No. 82 of 2018 whereby the petition preferred for discharge from the offences under Sections 147, 148, 149, 323, 353, 427, 431, 436, 504 and 120(B) of the Indian Penal Code has been rejected and simultaneously charges have been framed only under Sections 435/149 and 353 of the Indian Penal Code.



Learned counsel for the petitioners has submitted that there was a road blockade caused by an irate mob because of one businessman having been kidnapped. The name of the petitioners transpired during the course of investigation. There has not been any attempt on the part of the investigating agency to ascertain whether the petitioners had also participated in the occurrence.

It has further been submitted that in a mechanical manner, the petitioners were chargesheeted and were sent up for trial with Section 436 of the Indian Penal Code also as one of the charges along with other Sections of the Indian Penal Code. It may be noted that all other Sections except section 436 of the Indian Penal Code is triable by court of Magistrate. Since Section 436 of the Indian Penal Code is triable only by court of Sessions, the petitioners preferred an application for discharge under Section 227 Cr.P.C. which was rejected by the order impugned.



After rejecting the prayer for discharge, if the trial court was of the view of that only Sections 435, 149 and 353 of the Indian Penal Code was made out from the facts of the case, all of which Sections are triable by a court of Magistrate, the learned trial court ought to have remitted the matter to the learned Magistrate for entertaining any application for discharge under Section 239 Cr.P.C.

Rejecting the petition for discharge and thereafter framing charge under Sections which are triable by Magistrate, the learned trial court has committed a folly.

Looking at the order passed by the learned Additional Sessions Judge-XII, Patna dated 02.05.2019 which is impugned in the present petition, the submissions made on behalf of the petitioners appears to be correct.

The order dated 02.05.2019 therefore is set aside.



The matter is remitted to the learned trial court viz. learned Additional Sessions Judge-XII, Patna to pass necessary orders in accordance with law viz. that if he finds that only offences under such Sections which are triable by a Magistrate is made out against the petitioners in the facts of the case, the case be transmitted to the concerned Magistrate for deciding the application for discharge if it is filed by the petitioners.

With the aforesaid observation/direction, the petition stands allowed and disposed of.

(Ashutosh Kumar, J)

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