

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17096 of 2018**

Arising Out of PS. Case No.-221 Year-2015 Thana- SURSAND District- Sitamarhi

1. Md. Aslam Khan, Son of Israil Khan,
2. Naseem Khan, Son of Farmood Khan, Both are Resident of Kumbha, P.S. Sursand, District- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Dr. Anand Kumar

For the Opposite Party/s : Smt. Nirmala Kumari

**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT**

Date : 14-08-2019

Heard learned counsel for the parties.

Petitioners, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 08.01.2018, passed by the learned Additional District and Sessions Judge-II, Sitamarhi in Sessions Trial No. 141 of 2017 arising out of Sursand P.S. Case No. 221 of 2015, whereby and whereunder the Court below has rejected the petition dated 21.03.2017 filed under section 227 of Cr. P.C. for discharging the petitioners for offence under sections 147, 148, 149, 341, 323, 307, 302, 504 and 506 of the Indian Penal Code.

Submission of learned counsel for the petitioners is



that the present prosecution has been instituted with *mala fide* intention for the purposes of harassment. As a matter of fact that the petitioners were not found present at the place of occurrence. Further submission is that after investigation, the police has submitted final form against the petitioners on 28.03.2016. However, the learned Magistrate differing with the police report, took cognizance against the petitioners on 26.05.2016 in a most mechanical manner. Thereafter, the learned Additional District and Sessions Judge-II has rejected the discharge petition without applying its judicious mind and as such, the order impugned is fit to be quashed.

Learned A.P.P. appearing on behalf of the State opposed the application by contending that petitioners are named in the First Information Report. He further submits that on perusal of paragraph nos. 1, 6, 9, 10, 11, 12, 13 of the case diary, it appears that the witnesses have also named the petitioners. The postmortem report supports the allegations levelled against the petitioners. Moreover, the order impugned is a revisable order and the petitioners have an alternative remedy to file a revision against the same.

Considering the facts and circumstances of the case and the fact that the learned Court below has found the



sufficient materials against the petitioners and rejected the discharge petition, this Court does not find any infirmity in the order impugned. Moreover, the impugned order is a revisable order and the petitioners have an alternative remedy to file a revision against the same.

In view of the discussions made above, this Court is not inclined to interfere in the matter under its extra ordinary jurisdiction under section 482 of the Code of Criminal Procedure. The prayer for quashing the order dated 08.01.2018 is, hereby, rejected.

The application, accordingly, stands dismissed.

(Arvind Srivastava, J)

shailendra/-

AFR/NAFR	NAFR
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