

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3210 of 2017**

Arising Out of PS. Case No.-48 Year-2006 Thana- MAHUA District- Vaishali

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Dhananjay Rai @ Dhananjay Kumar son of Sri Ramchandra Rai @
Ramchandra Prasad Yadav, resident of Village- Mahua Singh Rai, Police
Station - Mahua, District - Vaishali.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Kumar Rishikesh Chanchal

For the Opposite Party/s : Mr.Dashrath Mehta

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

Date : 04-04-2019

Heard learned counsel for the petitioner as well as
learned Addl. P.P.

Petitioner has challenged the order dated 24.10.2016
passed by Addl. Sessions Judge IV, Vaishali at Hajipur in Sessions
Trial no. 70 of 2012 whereby and whereunder the prayer, having
been made on behalf of the petitioner under section 227 of the
Cr.P.C, has been rejected.

It has been submitted at the end of the petitioner that
though, at an initial stage, he was named but, during course of
investigation, on a prayer made by the petitioner before the D.I.G,
Dy.S.P. was asked to supervise the case who, accordingly acted
and during course of supervision, found absence of the petitioner
on account of having his presence at his office being posted in a



postal department at Patna and in likewise manner, even during course of investigation, majority of independent witnesses have not named the petitioner whoever named are interested, partisan and family members of the deceased. Consequent upon, rejection of the prayer at the end of learned lower court, even admitting that some of the witnesses have not named the petitioner is not in accordance with law. As such, the order impugned be set aside.

Learned Addl. P.P opposes the same.

Times without number, the Hon'ble Apex Court has occasioned to adjudicate upon the propriety of an order, so passed at the stage under sections 227 and 228 of the Cr.P.C. In **Amit Kapoor vs. Ramesh Chander and another reported in 2012 (9) Supreme Court Cases 460**. It has been held.

Para-17. "Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence



of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.”

When the Hon'ble Apex Court has allowed an acknowledgement of the material to be considered at the present moment weaker than the prima facie case then, in that event, petitioner has no prospect to challenge. Moreover, the veracity status of witness could not be adjudged at the present stage. So far the plea of *alibi* is concerned always remains subject to trial. Hence, instant petition lacks merit and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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