

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79713 of 2019

Arising Out of PS. Case No.-122 Year-2015 Thana- CHIRAIYA District- East Champaran

1. Bashisht Narayan Tiwari, S/o Late Ram Ekbal Tiwary
2. Surendra Kumar Thakur, S/o Kedar Thakur, both are R/o village - Birta Tola, P.S. - Chiraiya, District - East Chamaparan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Brij Kishor Mishra, Advocate

For the Opposite Party/s : Mr. Ram Sevak Choudhary, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-12-2019

Heard learned counsel for the parties.

The petitioners are accused in Sessions Trial No. 251 of 2017 pending before the learned Additional Sessions Judge-14, East Champaran at Motihari. The trial arises out of Chiraya P.S. Case No. 122 of 2015 registered under Sections 307/34 of the Indian Penal Code and Section 27 of the Arms Act. Later on, offence under Section 302 of the Indian Penal Code was added.

By the impugned order dated 15.10.2019 passed in the aforesaid sessions trial, the learned trial Judge has refused the prayer of the petitioner to discharge. The prayer has been refused on the ground that there is sufficient material against the petitioner disclosing involvement of the petitioners in the crime alleged. The fardbeyan, which was subsequently treated as dying declaration



and confession of the co-accused before the police, besides other materials, prayer was refused by the learned trial Judge on further ground that probable defence of the petitioner cannot be looked into at this stage.

Learned counsel for the petitioner has referred the statement made in para 5 and 6 of this application under Section 482 Cr.P.C. which are nothingelse but defence of the petitioners for their false implication in this case.

The law is well settled that the defence of the accused can be looked into at the appropriate stage of the trial and on the basis of probable defence whole prosecution case cannot be thrown away at the threshold.

After hearing the parties, I do not find any merit in this application. Accordingly, it stands dismissed.

The petitioners would be at liberty to raise their defence at the appropriate stage of trial which shall be considered without being prejudiced by this order.

(Birendra Kumar, J)

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AFR/NAFR	N.A.
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