

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79241 of 2019

Arising Out of PS. Case No.-370 Year-2008 Thana- KALUAHI District- Madhubani

Vinay Krishna Kumar @ Mahesh Yadav, Son of Lal bahadur Yadav, Resident of Village- Gularia Tola, P.S.- Kaluahi (Khajauli), District- Madhubani.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Senior Advocate

Mr. Armesh Kumar, Advocate

For the Opposite Party/s : Mr. Brajendra Nath Pandey, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 07-01-2020

1. This application has been filed for quashing of order dated 29.05.2019 passed by the learned Additional District & Sessions Judge-VII, Madhubani, in Sessions Trial No. 258 of 2019 (arising out of Kaluahi (Khajauli) P. S. Case No. 370 of 2008, whereby and whereunder, he has pleased to reject the petition filed under Section 227 of Cr.P.C.

2. The case in short is that Kaluahi (Khajauli) P. S. Case No. 370 of 2008 has been registered against the petitioner and other accused persons under Sections 147, 148, 149, 323, 324, 448, 380, 307 and 302 of IPC.

3. It further appears that the police after investigation, submitted the charge sheet under Sections 147, 148, 149, 323, 324 and 307 of IPC against some of the accused persons and



finding the allegation untrue against 14 other persons, but the learned Judicial Magistrate has taken cognizance against all the accused persons including the petitioner under Sections 302 of IPC, apart from the above sections mentioned in the charge sheet.

4. After cognizance, case was committed to the Court of Sessions, which ultimately came to the Court of learned Additional Sessions Judge for trial.

5. It further appears that during the trial, a petition under Section 227 of Cr.P.C. was filed by the petitioner for discharge. The learned trial court after hearing both the parties, vide order dated 29.05.2019 rejected the petition for discharge, against which, the present case has been filed.

6. It further appears from the supplementary affidavit filed by the petitioner that later on charges were framed against the petitioner and other accused persons for offences under Sections 147, 148, 149, 323, 324 and 307 of IPC by the trial court.

7. Being aggrieved by the above order for rejection of discharge petition filed by the petitioner, the present application has been filed on the ground that during the investigation, wife of the petitioner filed a representation before the D.G.P. of police for making impartial investigation in the murder of a 12



years old handicapped boy and the matter was referred to D.I.G., Darbhanga Range, Darbhanga, who supervised the case and referred the matter to I.G., Darbhanga Range, Darbhanga and forwarded the supervision note to the Superintendent of Police, Madhubani. It has also been submitted that as the S.P., Madhubani found that the deceased handicapped boy was done to death by prosecution side in order to implicate the petitioner and other named accused persons in the present case. As such, S.P., Madhubani directed for institution of Kaluahi P. S. Case No. 54 of 2009.

8. Submission of learned counsel for the petitioner is that there is no eye witness of the occurrence in this case and the materials has come during the investigation that it is the prosecution party who has killed the 12 years handicapped boy and got the petitioner and other accused persons implicated in this case and the S.P. Madhubani made a direction to institution of Kaluahi P. S. Case No. 54 of 2009, but in spite of that the charge sheet has been submitted against the petitioner and other accused persons and petition for discharge under Section 227 of Cr.P.C. has been rejected, without considering the aforesaid fact.

9. Heard learned APP for the State, who has opposed this application on the ground that at the time of framing of charge,



the learned trial court has to consider the evidence available on the record and he does not have examine the admissibility of the evidence or any appreciation of the evidence, he could not meticulously examine the evidence available on the record and the present case. Apart from the F.I.R. several witnesses have named the petitioner and other accused persons and that shows the active involvement of the petitioner and other accused persons, which will appear from Paras 17, 18, 19, 20, 21 and 26 and several other paragraphs of the case diary. Even if other witnesses have not supported the prosecution, it is not the stage to examine the availability of evidence and can be tested only at the time of trial. As such, the trial court has rightly rejected the petition under Section 227 of Cr.P.C. filed by the petitioner.

10. Having heard both sides and perused the materials available on the record including the case diary as submitted by the learned APP and consideration of evidence during the investigation has supported the case. No doubt, some of the witnesses have not supported the prosecution case and tried to shows that it is the prosecution party who has killed the deceased and another case has also been lodged at the instance of the S.P. Madhubani, but at the time of framing of charge, the learned trial court at the time of framing of charge, has to see as



to whether there are *prima facie* evidence or not and it could not meticulously examined the evidence.

11. Considering the discussions, made above, I find no merit in this application. Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

Sunil Shukla/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-1-2020
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