

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85539 of 2019

Arising Out of PS. Case No.-188 Year-2016 Thana- DHAKA District- East Champaran

1. Md. Naiyar Imam @ Niyar Imam Son of Late Shaikh Rafique Resident of Village - Jamua, P.S.- Dhaka, Distt - East Champaran.
2. Md. Ashraf Imam @ Ladle 2 Ashraf Imam Son of Sarwar Imam Resident of Village - Jamua, P.S.- Dhaka, Distt - East Champaran.
3. Asghar Imam Son of Naiyar Imam Resident of Village - Jamua, P.S.- Dhaka, Distt - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Anisur Rahman, Advocate
For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 09-01-2020 Heard the counsel for the parties.

2. The petitioners have challenged the order of refusal of discharge under Sections 239 of the Cr.P.C. passed on 09.09.2019 by learned Sub Divisional Judicial Magistrate, Sikrahna, East Champaran at Motihari in connection with Dhaka P.S.Case No.188 of 2016.

3. The challenge is on the ground that the police had not sent up the petitioners for trial. However, learned Magistrate took cognizance in a mechanical manner. Second ground is that while refusing the prayer of the petitioners, statement of independent witnesses before the police recorded in paras-17,



19 and 25 was not considered wherein the witnesses stated that no such occurrence ever took place.

4. The impugned order would reveal that the court below found that the order of cognizance under Sections 341, 323, 504 and 379/34 of the Indian Penal Code was not challenged. It further found that paras-3,5,6,7,8 and 17, there is sufficient material against the petitioners to proceed with the trial. The court further found that earlier a petition under Section 245 of the Cr.P.C. was filed for discharge which was dismissed as not maintainable. However, the court below while disposing of the said application found that there is sufficient material for framing of the charge.

5. Learned counsel further submits that the present case is counter blast of Dhaka P.S.Case No.188 of 2016 by the petitioner vide Annexure-2.

6. According to FIR, when the informant was getting earth filled on his land, the FIR named accused persons came there and started hurling abuses. On being resisted by the informant, all the accused persons committed assault with different weapons and committed theft of Rs.10,000/- and mobile phones of the informant.

7. The case diary reveals that eye witnesses Md.



Sarfaraz Alam, Shamsul Hoda and Md. Jalalulaha Khan have supported the allegation of commission of assault. Whereas some other witnesses examined by the police stated that no such occurrence had, in fact, taken place.

8. The law is well settled that trustworthiness of the witness cannot be decided at the stage of charge. The court is required to see whether *prima-facie* commission of any offence is disclosed on the basis of evidence of the witnesses and the material on record which is already there. Hence, this application has got no merit. Accordingly, it stands dismissed.

(Birendra Kumar, J)

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