

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83344 of 2019

Arising Out of PS. Case No.-250 Year-2017 Thana- SHERGHATI District- Gaya

1. RAM NIWAS SINGH Son of Raghav Singh Resident of Village - Khuttikewal, P.S.- Hunterganj, District - Chatra (Jharkhand).
2. Ram Kumar Mishra Son of Balmukund Mishra Resident of Village - Suggi, P.O. Kubba, P.S.- Hunterganj, District - Chatra (Jharkhand).
3. Ramanuj Mishra Son of Balmukund Mishra Resident of Village - Suggi, P.O. Kubba, P.S.- Hunterganj, District - Chatra (Jharkhand).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Md. Javed Jafar Khan
For the Opposite Party/s : Mr.Tarun Prasad Mandal

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 06-01-2020

Heard learned counsel for the parties.

This application has been filed under Section 482 of the Cr.P.C for quashing the order dated 03.06.2019 passed by learned ACJM, Sherghati, Gaya in Sherghati (Dobhi) P.S. Case No. 250 of 2017, by which learned court below took cognizance against the accused-petitioners for the offence punishable under Sections 341, 504, 506, 302/34 of the Indian Penal Code.

Informant who is son of deceased has alleged in his written complaint that on 14.05.2017 while he was returning from Hunterganj along with his father on Scooty and as he reached near Naukidih road, 5-6 persons who were sitting there



including petitioner caught hold of him and started abusing and assaulting and thereafter one of them whom he did not recognize shot on the temple of his father as a result of which he died while being carried to hospital and on the basis of said written complaint Sherghati (Dobhi) P.S. Case No. 250 of 2017 was instituted and after completing investigation police submitted chargesheet against the petitioners and the court below by order dated 13.06.2019 on the basis of police paper, took cognizance against the petitioners under Sections 341, 504, 506 and 302/34 of the Indian Penal Code.

On the basis of evidence collected during investigation, case diary and chargesheet filed against petitioners, the court below found *prima facie* case to be made out against the petitioners and took cognizance for the offence punishable under Sections 341, 504, 506, 302/34 of the IPC and issued summons for their appearance to face trial.

At the stage of taking cognizance the court has to form an opinion on the basis of materials available in case diary that whether a *prima facie* case is made out against the accused or not.

The defence of the accused cannot be considered at the time of taking cognizance. This Court in its inherent jurisdiction



cannot substitute its view regarding sufficiency or adequacy of material before the court below at the time of taking cognizance and issuance of summons against accused as same is within exclusive domain of trial court, as such I am not inclined to interfere with the order dated 03.06.2019 passed by learned ACJM, Sherghati, Gaya.

However, the petitioners will be at liberty to raise all the issues raised before this Court as well as other points available to them in accordance with law at subsequent stage i.e. at the time of framing of charge.

Subject to the aforesaid observation and liberty, this application is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.01.2020
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