

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19039 of 2021**

Arising Out of PS. Case No.-208 Year-2019 Thana- JANDAHA District- Vaishali

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Ramu Sahani @ Ramu Kumar Sahani, Son of Late Lala Sahani, Resident of
Hathsarganj, P.S.- Hajipur Town, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Advocate

For the Opposite Party/s : Mr. Umeshanand Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 20-04-2022 Learned counsel for the petitioner is permitted to

remove the defect(s), as pointed out by the office, if any, within

a period of four weeks from today.

2. Heard learned counsel for the petitioner and learned
APP for the State.

3. The present application has been filed for quashing
the order dated 17.12.2020 passed by the learned Additional
Sessions Judge-IV, Vaishali at Hajipur in connection with
Jandaha P.S. Case No. 208 of 2019 (S.T. No. 150 of 2020) by
which he has rejected the application filed by the petitioner
under Section 227 of the Cr.P.C.

4. It is submitted on behalf of learned counsel for the
petitioner that the petitioner is named in the F.I.R. and there is
allegation against him that he along with other co-accused



persons took away the deceased and shot him dead. However, after proper investigation, the investigating officer has submitted final form showing the petitioner as innocent, but the learned court below (Sub-Divisional Judicial Magistrate, Vaishali at Hajipur) differing with the final form has taken cognizance under Sections 302, 120B/34 of the Indian Penal Code and Section 27 of the Arms Act against this petitioner also.

5. Being aggrieved by the order taking cognizance and on being found that there is no material on record suggesting the complicity of this petitioner, resulted into submission of final form No. 276 of 2019 dated 31.10.2019, showing the case false against the petitioner, he filed a petition for discharge under Section 227 of the Cr.P.C. on 16.10.2020.

6. On the other hand, learned counsel for the State submitted that there is no infirmity in the impugned order dated 17.12.2020, inasmuch, as sufficient materials have come during course of investigation, which necessitates in passing of the cognizance order and framing of the charge on the basis of the materials available on record.

7. The learned court below has considered the submissions set forth in the petition for discharge and after going through the materials on record found that during the



course of investigation, witnesses have supported the prosecution case and moreover, the accused-petitioner is named in the F.I.R. and there is allegation of taking away the deceased and, as such, found no merit in the discharge petition and accordingly rejected the petition for discharge vide order dated 17.12.2020.

8. Having heard the learned counsel of the parties and taking into consideration the fact that the petitioner is named in the F.I.R. and there is specific allegation against the petitioner that he had taken away the deceased, apart from the fact that there are other evidences came during the course of investigation finding out a prima facie case against the petitioner so as to frame the charge against him.

9. It is well settled by the Hon'ble Apex Court in catena of the judgments that the judge while considering the question of framing charge under Section 227 of the Code of Criminal Procedure has the undoubted power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge;



by and large if two views are equally possible and if a judge is satisfied that the evidence produced before him giving rise to some suspicion, but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The judge cannot act merely as a post-office or a mouth piece of prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry in the pros and cons of the matter and weigh the materials as if he was conducting trial. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

10. The aforesaid principles has been reiterated in various judgments including the judgments rendered in the case of **Sajjan Kumar Vs. Central Bureau of Investigation**, reported in (2010) 9 SCC 368; as also in the case of **State By the Inspector of Police, Chennai Vs. S. Selvi and Anr.**, reported in (2018) 13 SCC 455.



11. In the aforesaid facts and circumstances as also in view of the aforesaid settled principles of law, this Court does not find any merit in the present application which require any interference in the impugned order dated 17.12.2020.

12. Accordingly, the present application stands dismissed.

(Harish Kumar, J)

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