

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10820 of 2021

Arising Out of PS. Case No.-426 Year-2017 Thana- SAMASTIPUR MUFFASIL District-
Samastipur

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1. ASHOK KUMAR SINHA Son of Late Anand Kishore Prasad
 2. Keshav Kumar Sinha @ Keshav Son of Sri Ashok Kumar Sinha
Both are resident of Village - Musapur, P.S. Samastipur Mufassil, District -
Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Nilesh Kumar, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

**(The proceedings of the Court are being conducted through
Video Conferencing and the Advocates joined the proceedings
through Video Conferencing from their residence.)**

Date : 29-04-2022

Heard learned counsel for the parties.

This application under section 482 of the Cr.P.C has
been filed for quashing the order dated 12.12.2019 passed by
learned Sessions Judge, Samastipur, in S.T. No.329/2018 arising
out of Mufassil P.S. Case No. 426/2017, by which he has
rejected the discharge application made on behalf of the
petitioners under section 227/228 Cr.P.C. and fixed the date for
framing of charge.

Informant has alleged in FIR that Informant and his
wife were ploughing their field in the meanwhile both the
accused variously armed came and assaulted them on account of

which her wife received injury on her right hand and right eye. It is further alleged that accused petitioner Ashok Kumar sinha thrashed her wife on earth and assaulted her and put his hand in her blouse and took away golden chain and cash of Rs. 1500/- and when he protested he was also assaulted with the butt of pistol on his head.

It has been submitted by learned counsel for the petitioners that petitioners and Informant are full brother and they are practising advocate in the Civil Court of Darbhanga and Samastipur. It is further submitted by learned counsel for the petitioners that there is land dispute between the parties for which Partition Suit No. 17 of 2013 is going on.

A petition under Section 227 of Cr.P.C. was filed by the petitioners before the Trial Court stating therein that allegations as made in the FIR are false and they have been falsely implicated in this case. It has further been submitted by them that the injuries as reported are simple in nature and, therefore, no offence against the petitioners are made out and, as such, they be discharged. It has been further contended that no offence under Section 308 of I.P.C. is made out.

After hearing both the parties, the court of Sessions Judge rejected the petition filed by the petitioners under Section

227 and 228 of Cr.P.C. on the ground that there are sufficient materials on the record against accused persons for framing of charge. The court below has also held that offence under Section 308 of I.P.C. is also made out against the petitioners on the basis of evidences collected and statement of witnesses made during investigation.

The court below has held that accused petitioners carrying handle of tube-well and iron-rod assaulted the informant, when informant claimed that the land belongs to him. All the witnesses have supported the case of informant. From the injury report, all the injuries are said to be simple in nature but some is on the vital parts of the body. The weapons used were also sharp as well as blunt substance, as such, there are sufficient evidence for framing charge under Section 308 of I.P.C. and, thereafter, the court below rejected the petition of petitioners and directed them to be personally present for framing of charge.

The Apex Court in its order and judgment in the case of **Amit Kapoor Vs. Ram Chander and Anr** since reported in **2012 (9) SCC 460** in para 17 held as under:-

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the

case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

Under the facts and circumstances of this case and in view of law laid down by Apex Court, I am not inclined to interfere with the order passed by the trial court dismissing the discharge petition of petitioners and directing them to be physically present for framing of charge.

The Petition stands dismissed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA