

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60462 of 2022

Arising Out of PS. Case No.-482 Year-2019 Thana- MAKHDUMPUR District- Jehanabad

1. NANHAK CHANDRA SHARMA @ NANHAK SINGH SON OF LATE KAMESHWAR SINGH R/O VILLAGE- UMTA, P.S.- MAKHDUMPUR, DISTRICT- JEHANABAD PRESENTLY RESIDING AT 8, DUPLEX COLONY, SHIVPURI, CHITKOHRA, P.S.- GARDANIBAGH, DISTRICT- PATNA
2. SHIV KUMAR @ SHIVJI SINGH SON OF NANHAK CHANDRA SHARMA R/O VILLAGE- UMTA, P.S.- MAKHDUMPUR, DISTRICT- JEHANABAD PRESENTLY RESIDING AT 8, DUPLEX COLONY, SHIVPURI, CHITKOHRA, P.S.- GARDANIBAGH, DISTRICT- PATNA

... .. Petitioner/s

Versus

1. The State of Bihar
2. RITA DEVI WIFE OF RAMASHRAY KUMAR @ RINKU YADAV R/O VILLAGE- BISHUNPUR, P.S.- MAKHDUMPUR, DISTRICT- JEHANABAD

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar

For the Opposite Party/s : Mr.Navin Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 04-05-2023 This application has been filed for quashing of order dated 25.04.2022 passed by Additional Chief Judicial Magistrate- IIIrd cum- Sub-Judge-IIIrd, Jehanabad, in connection with Makhdumpur P.S. Case No. 482/2019 (G.R. No. 2230/2019) whereby and whereunder the Court below was pleased to take cognizance against the petitioners and others for offence punishable under Sections 302,120 (B)/34 of the I.P.C. and issued summons to the petitioners. The case is pending in the court of Additional Chief Judicial Magistrate- IIIrd cum-



Sub-Judge-IIIrd, Jehanabad in G.R. Case No. 2230/2019.

The prosecution case in short is this that the opposite party no. 2, Rita Devi gave her fardbeyan on 29.10.2019 in Sadar Hospital, Jehanabad alleging interalia that on 28.10.2019 her husband namely Ramashray Kumar @ Rinku Yadav had gone to see cultural programme on eve of Deepawali in Sangrampur on NH-83. It has been alleged that at about 09:00 P.M. she received information that her husband was lying dead on NH-30. The opposite party no. 2 alongwith her nephew came to the place of occurrence in village Mushi Bira and saw that the motorcycle was in damaged condition and her husband was not there. On enquiry, it transpired that her husband was brought to Sadar Hospital, Jehanabad for treatment, then the informant went to Sadar Hospital, Jehanabad, where she saw her husband lying dead in the ambulance. She suspected that the accused persons including the petitioners have killed her husband with conspiracy.

Learned counsel for the petitioner submits that the chargesheet has been submitted under Section 304(A) of the Indian Penal Code against one of the accused, but the learned Court below has taken cognizance against all the accused under Section 302 of the Indian Penal Code. He further submits that



from the materials available on records, no case under Section 302 of the IPC is made out.

Considered the submissions of the parties. Heard learned counsel for the APP also.

In my view, these grounds can be raised by all the accused persons at the stage of framing of charge and if such an application is filed, the trial Court is duty bound to consider the same in accordance with law after examining the materials available on record and after considering the arguments raised by the petitioners and other accused persons. The trial court will not act merely as a post office for framing of charge as held by the Supreme Court in the case of *Kanchan Kumar Vs. State of Bihar* reported in (2022) 9 SCC 577.

The Court below will not insist on the appearance of the petitioner No. 1 who is said to be 85 years of age till the disposal of the discharge application.

With the aforesaid observations and directions, this application is disposed of.

(Sandeep Kumar, J)

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