

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33569 of 2015

Arising Out of PS. Case No.-156 Year-2007 Thana- SHERGHATI District- Gaya

Girja Kumar @ Girja Prasad Son of Late Ram naresh Prasad, Resident of
Mohalla- Lipgunj Chatti, P.S.- Sherghati, District- Gaya.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Binay Kumar, Son of Shri Mahendra Mahto, Resident of Mohalla- Narayan
Colony, P.S.- Sherghati, District- Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ramakant Sharma, Advocate
		Mr. Akshay Ashish, Advocate
		Mr. Lakshmikant Sharma, Advocate
For the Opposite Party/s :		Mr.Madan kumar APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 21-02-2023 Heard the parties.

This application has been filed for quashing the order dated 30.04.2015 passed by Addl. District and Sessions Judge, 3rd, Gaya in Sessions Trial No. 112/2012 arising out of Sherghati P.S. Case No. 156/2007 lodged on 07.07.2007 for the offence under Section 147, 148 149 447, 307, 302 and 435 of the IPC and Section 27 of the Arms Act.

“As per the FIR, the informant got information that his brick made house situated at Sheikhpura village is being demolished by Nagendra Mahto and others. On information, he rushed to the spot along with his Maternal Uncle Ram Lakhan Mahto and other villagers where he saw that 18-20 persons who



have Rifle, Katta and lathi in their hands were standing there and were demolishing the wall of the house of the informant and upon seeing that the informant and other persons reached the spot, Binay Kumar instigated to kill all 4 persons including the Informant and handed over the rifle to Chunnu Mahto who shot maternal uncle of the informant namely Ram Lakhan Mahto and after the gun shot he fell down and got injured seriously and when he was taken to Hospital he was declared dead by the doctor. Reasons behind this occurrence is said to be land dispute between the parties since long.”

Learned counsel for the petitioner submits that the opposite party no. 2 has been discharged illegally by the impugned order dated 30.04.2015 on the basis of *alibi* and other documents. He further submits that case of the opposite party no. 2 was not a fit case of discharge and the charges should have been framed.

None appears for the opposite party no. 2 despite service of notice.

I have heard the learned A.P.P. for the State also.

In the opinion of this Court, the Impugned order dated 30.04.2015 by which the Opposite Party no. 2 has been discharged is illegal.



The Trial Court should not hold mini trial and after examining the materials available on record, the accused should not have been discharged on the basis of documents of *alibi* and the letter of the Deputy Superintendent of Police. *Alibi* and other documents can be proved only after examining all witnesses during trial and when the *prima-facie* case was made out, the opposite party no. 2 should face trial.

In view of the above, the order dated 30.04.2015 passed by the Court of Addl. District and Sessions Judge, 3rd Gaya, in Sessions Trial No. 112/2012 arising out of Sherghati P.S. Case No. 156/2007 lodged on 07.07.2007 for the offence under Section 147, 148, 149, 447, 307, 302 and 435 of the IPC and Section 27 of the Arms Act is hereby quashed.

The Court below is directed to start the trial of this Case within 15 days of receipt/communication of this order and conclude the trial of the Opposite party no. 2 within six months after holding the trial on day to day basis.

Let a copy of this order be communicated to the District Judge, Gaya through FAX for its compliance forthwith.

(Sandeep Kumar, J)

Shishir/Vikas

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