

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23701 of 2021

Arising Out of PS. Case No.-241 Year-2018 Thana- HATHAURI District- Muzaffarpur

RAJESH KUMAR SON OF RAMBRIKSH RAY RESIDENT OF VILLAGE
AND POST- BERAJ, P.S.- HATHAURI, DISTRICT- MUZAFFARPUR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. INDAL RAY SON OF LATE RAM CHANDRA RAY RESIDENT OF
VILLAGE AND POST- BERAJ, P.S.- HATHAURI, DISTRICT-
MUZAFFARPUR

... .. Opposite Party/s

Appearance :

For the Petitioner : Mr. Ganesh Prasad Singh, Advocate
For the State : Mr. Ram Naresh Ray, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 15-03-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973, on behalf of petitioner for quashing the order dated 21.01.2021 passed by the court of learned 15th Additional District & Sessions Judge, Muzaffarpur, in Sessions Trial No. 50 of 2020 arising out of Hathauri P.S. Case No. 241 of 2018 whereby the learned court below has rejected the petition filed on behalf of the petitioner under Section 227 of the Criminal Procedure Code for discharge of the petitioner.



3. The prosecution case in brief is that on 15.11.2018, co-accused Jadunandan Rai tried to kill the brother of the informant, namely Ashrfi Rai, by knocking him with tractor but he was saved. Thereafter it is alleged that on 16.11.2018, all the 14 F.I.R. named accused persons, including this petitioner, along with 10-12 unknown persons, came to the house of the informant and assaulted his brother Asharfi Rai and other family members, on account of which Asharfi Rai died on the spot and others sustained injuries.

4. It is submitted by learned counsel appearing on behalf of the petitioner that petitioner is absolutely innocent and has not committed any offence as alleged in the First Information Report. He has been falsely implicated in this case due to old land dispute regarding passage as well as local village politics. As a matter of fact, no such occurrence as alleged in the F.I.R. has taken place. The entire story, as set up by the informant, is malicious, false and concocted. He next submits that petitioner and the informant are co-villagers, residing in village Beraï and there is old enmity going on between the family of the informant and co-accused Jaynandan Ray since long and the family of the informant wanted to capture the land of co-accused Jaynandan Ray, for which a quarrel took place



between both the families on the alleged date and time of occurrence, in which the deceased sustained injuries and since petitioner is agnate of co-accused Jaynandan Ray, he has been falsely implicated in this case without any specific overt act attributed against the petitioner. The petitioner is only alleged to be member of the mob.

5. On the other hand, learned A.P.P. for the State has vehemently opposed the statements made on behalf of the petitioner and supported the impugned order submitting that there is sufficient material on record against the petitioner and other accused persons. It is next submitted that the points raised in the instant petitioner are the defence of the petitioner which can only be looked at the stage of the trial and on these grounds the petitioner cannot be discharged and as such, no interference is required by this Hon'ble Court at this stage.

6. Having heard the rival submissions advanced by learned counsels appearing on behalf of the parties and perusing the materials available on record, this court is of the view that it is the specific case of the prosecution that all the accused persons, including this petitioner, assaulted the informant and his family members on account of which Asharfi Ray died. It is settled law that the defence of an accused person cannot be



considered at the stage where the accused person wants to be released under Section 227 of the Criminal Procedure Code, 1973. The Hon'ble Apex Court in the case of *M. E. Shivalingamurthy versus Central Bureau of Investigation, Bengaluru* reported in (2020) 2 SCC 768 held that when an accused person requests dismissal under Section 227 of the Criminal Procedure Code, 1973, no consideration of the accused's defence is to be made. At this stage, only the facts mentioned in the F.I.R./Complaint or the materials collected during course of investigation along with the charge-sheet are to be seen. If the materials placed before the court disclose grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing of charges and proceeding with the trial.

7. In view of the aforesaid facts and circumstances of the case, this court does not find any illegality, irregularity or error in the impugned order.

8. Accordingly, this application is dismissed.

(Prabhat Kumar Singh, J)

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