

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22497 of 2021

Arising Out of PS. Case No.-184 Year-2015 Thana- LAHERIYASARAI District- Darbhanga

1. Shankerjee Son Of Shri Kameshwar Prasad Resident Of Village/Mohalla - Belwaganj, P.S. - Laheriasarai, District - Darbhanga.
2. Lokeshjee Son Of Shri Kameshwar Prasad Resident Of Village/Mohalla - Belwaganj, P.S. - Laheriasarai, District - Darbhanga.
3. Sumeet Kumar Son Of Shri Kameshwar Prasad Resident Of Village/Mohalla - Belwaganj, P.S. - Laheriasarai, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ram Abtar Sharma S/o Late Bathhu Sharma Resident of Vill/Mohalla - Ismailganj P.S. - Laheriasarai, Distt. - Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kedar Jha
For the Opposite Party/s : Mr.A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 22-03-2024 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 28.02.2020 passed in Sessions Trial No. 211 of 2019, arising out of Laheriasarai P.S. Case No. 184 of 2015 by the learned Additional District & Sessions Judge-VIII, Darbhanga, whereby the application filed under Section 227 of the Cr.P.C. for discharge of petitioners has been rejected.

3. The prosecution case, in brief, is that, on the



alleged date and time of occurrence, the neighbor of the informant threw garbage in front of his shop and the informant objected upon which all the accused persons came there and on the order of co-accused Mahesh Choudhary, accused Sanjay Sah gave iron rod blow on the head of the informant. It is further alleged that other accused persons also assaulted the son of the informant as a result of which, he became injured. It is further alleged that accused Sanjay Sah and Mahesh Choudhary also snatched golden chain and ring and cash Rs.30,000/- from the possession of the informant. The villagers brought the informant and his son to DMCH for treatment.

4. On the basis of *fardbeyan* of the informant, Laheriasarai P.S. Case No. 184 of 2015 for the offences under Sections 341, 323, 504, 307, 379/34 of the Indian Penal Code was registered. On completion of investigation, police submitted chargesheet against all the accused persons including these petitioners and thereafter, learned C.J.M., after perusing the F.I.R., chargesheet and other materials available on record took cognizance against all the five accused persons including these petitioners.

5. Learned counsel for the petitioners submits that petitioners are not named in the F.I.R. and have been falsely



implicated in this case. The injury report of both the victims completely falsifies the version of the F.I.R., as alleged against accused persons. During medical examination, doctor has found only two injuries on the body of informant, which are simple in nature. He further submits that injury report of the son of the informant reveals that he sustained only one injury caused by hard & blunt substance. The nature of injury is simple and as such, chargesheet submitted by the police is misconceived and without jurisdiction. He next submits that on the basis of material available on record by the prosecution, there is no chance of conviction of the petitioners and as such, continuation of the proceeding for offence under Sections 341, 323, 307, 379 and 504/34 of the Indian Penal Code is an abuse of the process of the Court.

6. Learned A.P.P. for the State, while supporting the impugned order, submits that at the stage of framing of charge, the learned Court below is only required to evaluate the material and documents on record with a view to find out the existence of all the ingredients. At this stage, there is no need to evaluate the sufficiency of evidence to convict the accused and as such, this petition is devoid of merit and fit to be rejected.

7. Heard learned counsel for the parties. From perusal



of the F.I.R., it is apparent that there is specific materials that on the alleged date and time of occurrence, all the accused persons, including these petitioners, came at the house of informant, abused and assaulted informant by means of iron rod and when son of informant came to save informant, he was also assaulted by accused persons. It has also come in the F.I.R. that accused also took away gold chain and ring and cash of Rs. 30,000/- from the possession of informant. The points raised on behalf of the petitioners are in the realm of defence, which cannot be looked at this stage. The Hon'ble Supreme Court, in the case of ***M. E. Shivalingamurthy vs Central Bureau of Investigation***, reported in **2020 (2) S.C.C. 768**, has held 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 Cr.P.C.

8. Considering the facts and circumstances of this case and the law laid down by the Hon'ble Supreme Court in aforesaid case (*supra*), this petition is without any merit and is, accordingly, dismissed.

(Prabhat Kumar Singh, J.)

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