

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24810 of 2023

Arising Out of PS. Case No.-352 Year-2018 Thana- HUSSAINGANJ District- Siwan

1. Naseer Ahmad @ Nasir Ahmed Son of Late Jan Mohammad Resident of Village - Hassanpura, Police Station - M.H. Nagar, District - Siwan.
2. Azharuddin @ Pintu @ Pintoo Son of Naseer Ahmad Resident of Village - Hassanpura, Police Station - M.H. Nagar, District - Siwan.
3. Rehana Khatoon Wife of Naseer Ahmad Resident of Village - Hassanpura, Police Station - M.H. Nagar, District - Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Raghav Prasad, Advocate
For the State	:	Dr. Indivar Kumari, APP
For the Informant	:	Mr. Bipin Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 01-04-2024 Heard learned counsel for the petitioners, learned
A.P.P. for the State and learned counsel for the informant.

2. This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 21.03.2023 passed in Sessions Trial No. 22 of 2022, arising out of Hussainganj (M.H. Nagar) P.S. Case No. 352 of 2018, by the learned Additional District & Sessions Judge-II, Siwan whereby the application filed under Section 227 of the Cr.P.C. for discharge of petitioners has been rejected.

3. It is submitted on behalf of petitioners that the



prosecution story, as alleged, took place due to land dispute and for that one title suit, vide Title Suit No. 1056 of 2018, was filed on 26.09.2018, which is pending in the court of learned Sub Judge VI, Siwan and defendant no. 1 of the suit is father of the informant namely Manjoor Mian and in retaliation, the present F.I.R. has been lodged on 11.11.2018 i.e. after a lapse of 1½ months of the filing of the title suit. Petitioners are in peaceful possession and informant party are trying to capture the land forcefully and for that, the present F.I.R. has been lodged on concocted grounds. It is further submitted on behalf of petitioners that from perusal of the injury report, it appears that informant has received only two injuries, whereas it is specific case of the informant that seven persons have assaulted informant and thus, the injury report itself falsifies the prosecution story.

4. Learned A.P.P. for the State and learned counsel for the informant vehemently opposed the submission advanced on behalf of petitioners. While supporting the impugned order, learned counsel for the informant 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.

5. 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, these petitioners surrounded the informant and thereafter, petitioner nos. 1 and 2 gave knife blow to the informant, causing grievous injuries to him and when mother of informant came to save informant, she was also assaulted by petitioners with lathi. It has also come in the F.I.R. that accused also took away gold chain worth Rs. 50,000/- from the neck of informant's mother.

6. 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.

7. Considering the facts and circumstances of this case and the law laid down by the Hon'ble Supreme Court in the case of ***M. E. Shivalingamurthy (supra)***, this petition is without



any merit and is, accordingly, dismissed.

(Prabhat Kumar Singh, J)

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