

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71680 of 2023

Arising Out of PS. Case No.-352 Year-2016 Thana- BARBIGHA District- Sheikhpura

1. Veena Devi Wife Of Ramanur Prasad Singh Resident Of Village - Bhadrathi, Ps- Barbigha (KEWTI Op), Distt- Sheikhpura
2. Ramanuj Prasad Singh Son Of Late Ram Balak Singh Resident Of Village - Bhadrathi, Ps- Barbigha (KEWTI Op), Distt- Sheikhpura
3. Ram Prakash Kumar Son Of Ramanur Prasad Singh Resident Of Village - Bhadrathi, Ps- Barbigha (KEWTI Op), Distt- Sheikhpura
4. Ram Nivas Kumar @ Amit Son Of Ramanur Rpsad Singh Resident Of Village - Bhadrathi, Ps- Barbigha (KEWTI Op), Distt- Sheikhpura
5. Ram Lakhan Kumar @ Sumeet Son Of Ramanur Prasad Singh Resident Of Village - Bhadrathi, Ps- Barbigha (KEWTI Op), Distt- Sheikhpura

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ram Shankar Kumar S/O Late Ram Balak Singh Resident Of Village - Bhadrathi, Ps- Barbigha (kewti Op), Distt- Sheikhpura

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Sr. Advocate Ms. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the Opposite Party/s	:	Mr. Uday Chand Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 18-03-2024 Heard the parties.

2. This application has been filed for quashing the order dated 22.08.2023 passed by the Sessions Judge, Sheikhpura in connection with Sessions Trial No. 18 of 2021 arising out of Barbigha P. S. Case No. 352 of 2016 whereby the petition filed on behalf of the petitioner under Section 227 Cr.P.C. was rejected.



3. Prosecution case, in brief, is that the brother of the informant (petitioner No. 2) forcibly got executed the deed of gift in the name of his wife Veena Devi (petitioner No. 1) and also got executed the land of Saur Mauza at Bihar Sharif from the deceased/father of the informant and when the deceased/father tried to inform the matter to the informant, the brother of the informant and his wife throttled him to death and in order to disappear the evidence, they cremated the deceased even before the informant could reach his village.

4. Learned counsel for the petitioner submits that informant is none other than own brother of the petitioner No. 2. As a matter of fact, the present case is out and out a false case and father of the petitioner no. 2 died a natural death due to old age illness. It was petitioner No. 2 who was taking care the deceased in his old age and he got him treated at various places including Indira Gandhi Cardiology Institute, PMCH. He further submits that during course of investigation, Investigating Officer has recorded the statement of Dr. Prashant Kumar Suman of Shiv ROV Clinic who has stated that on 02.08.2016, Ram Balak Singh (deceased) was examined by him and the patient was restless and has breathing problem and hence, he was referred to PMCH. The deceased was admitted in PMCH on 03.08.2016



and was treated up to 09.08.2016. He next submits that parents of the petitioner No. 2 were living with him and informant lives in Delhi from a very long time and he did not attend the last rites even when their mother died and the present case has been lodged by the informant only with a view to grab the property. As such, there is no material available on record to frame charge against these petitioners and they deserve to be discharged from the present case and continuation of the proceeding is an abuse of the process of the Court.

5. 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.

6. Heard learned counsel for the parties. This Court is of the opinion that at the stage of Section 227 and 228 of Cr.P.C., the Court is required to evaluate the materials available on record with a view to find out existence of all the ingredients constituting the alleged offence. The Court is not required to hold mini trial during the stage of discharge. The burden of



proof for the charges is not yet on the prosecution or the investigating agency. The charges are required to be proved during the trial on the basis of evidence led by the prosecution/investigating agency. At this stage, Court has very limited jurisdiction and is required to consider ‘whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not’. The points raised by the counsel for the petitioners are in the realm of defence which cannot be looked upon 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 foregoing discussions and the law laid down by the Hon’ble Supreme Court in aforesaid case (*supra*), this quashing application stands dismissed.

(Prabhat Kumar Singh, J)

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