

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Revision No.781 of 2012**

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Amar Kumar @ Guddu S/O Late Madan Kharwar, resident of Mohalla-Sohanipatti, Buxure, P.S.- Buxure (T), District- Buxar

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Binod Kumar Singh Kharwar S/O Umashankar Kharwar, resident of Village- Firojpur, P.S.- Bhawar Col. District- Gajipur (U.P.)

.... .... Opposite Party/s

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**Appearance:**

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

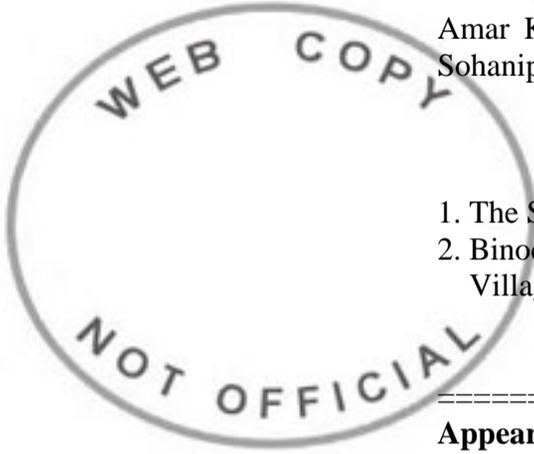
**ORAL ORDER**

05. 03-04-2014

This criminal revision is directed against the order dated 13.03.2012 passed by the Additional District Judge, F.T.C.-V, Buxar, whereby the court below has been pleased to reject the application filed on behalf of the petitioner under Section 227 of the Code of Criminal Procedure seeking discharge from the offences.

The prosecution case as according to the FIR attributes the suicidal death committed by the sister of the informant, to this petitioner who happens to be the husband, as well as on other accused, who have also been charged with the offences punishable under Section 498A of the Indian Penal code besides the offence punishable under Sections 306/34 of the Indian Penal Code.

Mr. Yogesh Chandra Verma, learned Senior Counsel has



appeared on behalf of the petitioner while the State is represented by the Additional Public Prosecutor and the opposite party no. 2 is represented by Mr. Akhileshwar Prasad Singh, learned senior counsel.

The sum and substance of the argument advanced by Mr. Verma to question the impugned order is that the court below has failed to assign reasons for rejecting the application and that the order is a non-speaking order without referring to the materials which has persuaded the court to pass the impugned order. Learned counsel with reference to the impugned order has stated that all that the court below has done is to observe that there were materials in the case diary for proceeding against the petitioner and forming such opinion, that the application has been rejected which is not the legislative intent underlying Section 227 of the Code of Criminal Procedure.

Learned counsel in support of his submission has relied upon a judgment of this Court reported in 2008 (1) PLJR 724 to submit that it has been held that there should not be a mechanical disposal of such application. With reference to a judgment of the Supreme Court reported in 2011(1) PLJR (SC) 33 (Sajjan Kumar vs. Central Bureau of Investigation) paragraph-17 it was submitted that the trial court is not to act as a post office or a mouth piece of



the prosecution and unless there is a prima facie case and a grave suspicion arises as to the accusations supported with probabilities, the accused need not be relegated to the rigors of trial. He thus submits that until such time the trial court takes note of the materials on record, he cannot be allowed to reject the application in a mechanical manner. It was submitted that as no material has been referred to by the trial court while passing to impugned order hence the revision.

The argument of Mr. Verma has been contested by Mr. Akhileshwar Prasad Singh to submit that as there are materials present in the case diary which casts suspicion on the petitioner, that the trial court has chosen to dismiss the application. Learned counsel in support of his submission has referred to paragraph-4 to 8, 10, 14, 15, 32, 45 and 47 of the case diary to submit that in the backdrop of the materials and the circumstances present in these paragraphs no infirmity could be attached to the order impugned. Mr. Singh with reference to the provisions underlying Section 106 of the Evidence Act, 1872 has stated that in the present case since the death occurred in the house of the petitioner, the onus entirely lay upon him to prove the same and until such time, this burden is discharged, the petitioner cannot wriggle out of the matter.

In reply, Mr. Verma has referred to paragraphs 55, 56, 62



and 63 of the case diary to submit that the children himself has stated that their mother was under a depression after having a fight with the informant and which led to the unfortunate incident. He thus submits that when there is material available which completely exonerates the petitioner, it is highly unjust for the trial court to allow the petitioner, to face the trial for the offences alleged.

I have heard learned counsel for the parties and have perused the materials on record. The provisions underlying Section 227 of the Code of Criminal Procedure only requires the trial court to assign reasons where it decides to discharge an accused and does not require a discussion on the materials, in case a court decides to reject such petition but nevertheless the courts have been reflecting their minds in such orders which need not be very detailed rather only requires an application of mind by the court concerned. Insofar as the present case is concerned, the trial court has very clearly stated that he has gone through the paragraphs of the case diary to form its opinion and whereafter it is the onus of the petitioner to prove that there was nothing in the case diary to implicate him and that there were no grounds available for proceeding against him.

Even if this Court would agree that the order impugned is



rather brief but in cases of rejection there need not be a detail discussion as to the materials considered for it would amount to forming an opinion even before the trial has actually commenced. As the case presently stands in the light of the rival contentions, whereas there are materials charging the petitioner of being a reason for the unfortunate incident, there are materials relied upon by the petitioners which goes in his favour and thus in the circumstances it is to be seen during the course of trial whether or not the materials are sufficient to convict the petitioner for the offences he is charged against. The very judgment relied upon by Mr. Verma in fact persuades this Court not to interfere with this order inasmuch as the Supreme Court has held that a prima facie case or a grave suspicion is sufficient for proceeding against an accused at the stage of considering a discharge petition and at that stage it is not to be seen whether these materials are sufficient to convict or to acquit. Whether there was a dowry demand or whether there was any act of the petitioner which constitutes an offence under Section 498A or the suicide by the deceased was abetted by the petitioner are issues of fact which needs to be proved by cogent evidence. The statement recorded in the case diary have divergent views and in which view of the matter, any opinion by this Court at this stage of the matter would be

prejudicial to the interest of either of the parties. However, even while observing as such but considering the materials on record, this Court is not persuaded to interfere with the order impugned and this application is accordingly disposed of affording liberty to the petitioner to raise all issues as raised herein during the course of trial.

**(Jyoti Saran, J)**

S.Sb/-