

**IN THE COURT OF ADDL. DISTRICT & SESS. JUDGE-I cum SPECIAL JUDGE,
KAIMUR AT BHABHU**

**IA No. 01 of 2021 in SC/ST - 116 / 2019
BHABHUA SC/ST P. S. CASE NO. 31 / 2019
STATE Vs. Satyanarayan Mishra and Others**

04/12/2021 Present Sri Binay Kumar Singh, learned counsel on behalf of the accused-
petitioner and Sri Sanjay Singh learned S. P. P. for the State.

ORDER

The record is put up for order on petition dated 08.04.2021 filed by the petitioner namely, **1. Durgadatta Mishra @ Durga Mishra** under Section 227 of CrPC. By filing the petition, the petitioner has sought his discharge from the liability arising out of the present case.

It is submitted on behalf of the petitioner that he is employed as Modeling Supervisor in M.R. Fero Private Co. Ltd. for past 20 years and on the alleged date of occurrence, he was on his duty and was not even present at the place of occurrence. The perusal of the case diary shows that the witnesses Shanti Devi, Feku Bind, Begri Sah and Sonia Devi in their statements recorded during the investigation have also categorically stated that the petitioner accused was not involved in the commission of the alleged crime but has been implicated in the case because of a land dispute. After considering the material gathered during the investigation, the investigating officer also did not send the petitioner-accused up for trial while submitting charge sheet in the case. As, no prima facie case is made out against the petitioner, he deserves to be discharged from the liability of the case.

The learned Spl. P.P. opposed the discharge petition on the ground that there is sufficient material available on the record showing the complicity of the accused in the offence. Apart from the witnessed mentioned above, all the others witnesses examined during the investigation have supported the case of the prosecution. The veracity of the statements of the witnesses recorded u/s 161 of Cr. P.C. in the case diary, is a matter of trial and discharging the accused merely on the ground that the statements recorded u/s 161 of Cr. P.C. are not trustworthy, is not proper. The fact that the petitioner tried to enter into a compromise with the informant itself is an admission of the commission of the alleged crime by him. Hence, the discharge petition filed by the petitioner **1. Durgadatta Mishra @ Durga Mishra** deserves to be dismissed.

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According to the prosecution story, the informant and two others namely Feku Bind and Sonia Devi together purchased a land from one Sampurnanand Mishra about 4 years prior to the date of filing of the case and the three persons are in occupation of the land since then. On 06.09.2019, at about 04:00 PM while the wife of the informant was working in the field adjoining the land, the accused came and started abusing her by calling caste names and assaulted her with kick and fists. Hearing the noise, the people stated accumulating and the wife of the informant was finally saved. According to the informant, as there were talks of mediation going on, the filing of the FIR got delayed. After investigation, police submitted charge sheet in the case u/s 341, 323, 504(4), of IPC and Section 3(1)(r)(s), 3(2)(va) of SC/ST Act against the four accused namely Satyanarayan Mishra, Brindawan Mishra, Satyendra Mishra and Ashok Mishra showing the petitioner to be not sent up for trial on basis of plea of *alibi*. The court, finding a prima facie case made out against the all the FIR named accused including the petitioner, took cognizance and directed issuance of notice against all the accused.

Heard the Counsels and perused the record. The perusal of the record shows that the cognizance in the case is taken under Arms Act as well as under SC/ST Act apart from the provisions of IPC. The informant has specifically named the petitioner in his fardbayan. The petitioner is seeking discharge on the basis of plea of *alibi*. The plea of *alibi* is a matter of trial. The suspicions caused by the availability of the statement of witnesses examined during the investigation, supporting the case of prosecution, has not been explained by the petitioner. In the light of the principles laid down by the Hon'ble Supreme Court in the case of **Sajjan Kumar v. CBI 2010 (9) SCC 368; Union of India v. Prafulla Kumar Sanal and others 1979 (3) SCC 4; P Vijayan v. State of Kerla AIR 2010 SC 663**, the court is not inclined to discharge the petitioner from the liability of the case. Hence, present petition filed by the petitioner-accused u/s 227 CrPC is hereby **dismissed**.

(Dictated)

Sd./-

Spl. Judge

Kaimur at Bhabua

