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**(2016) 05 JH CK 0129**

**JHARKHAND HIGH COURT**

**Case No:** Cr. Revision No. 680 of 2013

Ritlal Marik

APPELLANT

Vs

State of Jharkhand

RESPONDENT

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**Date of Decision:** May 19, 2016

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 228

**Citation:** (2016) 3 LJLR 237

**Hon'ble Judges:** Mr. Ravi Nath Verma, J.

**Bench:** Single Bench

**Advocate:** Mr. Awanikant Prasad, A.P.P, for the State; M/s. Rajiv Sinha, Bhupal K. Prasad and Rohit Sinha, Advocates, for the Petitioners

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

**Mr. Ravi Nath Verma, J.** - Challenge in this revision application is to the order dated 19.06.2013 passed by learned 1st Assistant Sessions Judge, Deoghar in Sessions Case No. 18 of 2012 whereby and where under the petition filed by the petitioners for their discharge under Section 228 of the Code of Criminal Procedure (in short "the Code"), has been rejected.

2. Bereft of the unnecessary details, the facts, which are relevant for the proper adjudication of the issue involved in this case, in short, is that on the basis of the written report of the informant-Chintamani Manjhi, Mohanpur P.S. Case no. 236 of 2010 was instituted under Sections 341/323/504/506/379/34 of I.P.C. with the allegation that on 16.09.2010 at about 9.00 p.m., the accused persons namely Narain Marik, Prakash Marik, Jhagru Marik and Pitamber Marik entered into the house of his daughter-in-law-Bina Devi in drunken stage and started abusing her. On protest, accused Narain Marik and Pitambar Mahto caught hold Praveen Manjhi the grandson of the informant and assaulted him and when Bina Devi resisted, they

assaulted her also. On raising alarm, when the informant came to their rescue with his family members, the accused persons abused them also and accused Ritlal Marik, Sukhdeo Marik, and Dhaneshwar Mahto, who were armed with lathi, assaulted them as a result of which the informant received injury on his head, his son Naresh Manjhi sustained injury in his elbow, daughter-in-law and his grandson received injury on their head. It is further alleged that the accused persons snatched away some ornaments, clothes and also Rs.10,000/- cash from the possession of his daughter-in-law.

3. The police after investigation, submitted the charge-sheet against the petitioners under the different provisions including Section 307 of I.P.C. After commitment of the case, a petition for discharge under Section 228(i)(a) of the Code was filed by the petitioners, but the court below after hearing the parties rejected their prayer by order impugned dated 19.06.2013. Hence, this revision.

4. Learned counsel appearing for the petitioners assailing the order impugned as bad in law and perverse seriously contended that the court below while rejecting the prayer for discharge has not at all considered the evidence on record and failed to assign any reason or even whispered about the presence of any strong prima facie case or strong suspicion against the petitioners and in a mechanical manner without applying judicial mind, passed the order impugned holding that there is sufficient materials on record for framing of charge. As such, the order impugned is not sustainable in the eye of law.

5. Contrary to the aforesaid submissions, the learned counsel representing the State contended that the court below after considering the allegations made in the F.I.R. and finding sufficient materials on record passed the order impugned.

6. One of the basic requirement before a court while dealing with the petition filed for discharge under Section 228 of the Code is to record or assign reason upon consideration of the evidence and materials available on record and also to record the satisfaction that there is strong suspicion or strong prima facie case for proceeding against the accused. On perusal of the order impugned, it appears that the court below considering the injury report of informant party hold that that there are sufficient materials available on record to frame charge against the accused-petitioners but the court has not even whispered about the evidence relating to the said allegation. It is true that it is not required to martial the materials and evidence on record with a view to decide the complicity thereof but mere saying that there is sufficient material to frame charge is not enough. There appears to be some force in the submissions of the learned counsel for the petitioner that the court below has though mentioned about the case diary but has not considered that on which part of the case diary, the court below is relying upon and even the court below has not whispered or discussed any evidence available on record or assigned any reason or strong suspicion or prima facie case to frame charge.

7. In the result, this revision application is allowed. The order impugned is, hereby, set aside and matter is remitted to the court concerned with direction to pass appropriate order afresh as early as possible after considering the prima facie evidence and materials available on record.