

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18257 of 2015

Arising Out of PS.Case No. -22 Year- 2012 Thana -BIRUPUR SAHAYAK District- LAKHISARAI

1. Usha Devi & Anr. wife of Manoj Singh
2. Sittu Kumar @ Sintu Singh son of Manoj Singh Both are resident of village-
Saday Bigha, P.S. Birupur, District- Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bhanu Pratap Singh, Adv.

For the Opposite Party/s : Mrs. Sharda Kumari, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-06-2015

Heard learned counsel for the petitioners and learned
counsel for the State.

2. This application under section 482 of the Code of Criminal Procedure (for short 'the Code') is directed against the order dated 23.03.2015 passed by the learned Adhoc Additional Sessions Judge V, Lakhisarai in Sessions Trial No.621 of 2014 arising out of Birupur P.S.Case No. 22 of 2012 registered under sections 302 read with 34 and 120-B of the Indian Penal Code and section 27 of the Arms Act, whereby the application under section 227 of the Code filed by the petitioners for their discharge from the case has been rejected and the case has been fixed for framing of charge.

3. According to the prosecution case the informant's husband Arvind Kumar @ Munna had developed illicit relation with



his co-villager K. Devi, wife of one R. Singh. Subsequently, said K. Devi who after some time started blackmailing him and demanding Rs.1.5 lakhs from him. It has been alleged that eight days prior to the date of occurrence, an altercation had taken place between her husband and the said lady and her brother. It has also been alleged that the petitioners were instigating the said lady for demanding money from her husband. On 15.10.2012 at 5.00 a.m. she was informed on phone by her uncle-in-law that her husband has been shot dead by some unknown criminal. Immediately thereafter she came to her matrimonial home and saw the dead body of her husband Arvind Kumar @ Munna. She has further stated that she came to know from a co-villager, namely, Jitendra Kumar that the said K. Devi had informed him on phone at about 11.30 p.m. that Munna has been shot dead.

4. On the basis of the aforesaid allegation the informant suspected complicity of the said K. Devi, her brother Sintu Singh and the petitioners who might have conspired together and got her husband killed by some unknown criminal.

5. In the light of the allegations made by the informant, Birupur P.S.Case No.22 of 2012 dated 15.10.2012 was registered and investigation was taken up. On completion of investigation, the police submitted charge sheet against three persons including the two petitioners, who were named in the First Information Report, and

kept the investigation pending against said K. Devi and others unknown.

6. On perusal of the charge sheet, the learned Chief Judicial Magistrate took cognizance of the offence under sections 302 read with 34 and 201 of the Indian Penal Code and section 27 of the Arms Act and since the matter was exclusively triable by the court of Sessions, committed the case to the court of Sessions for trial.

7. At the stage of framing of charge, an application under section 227 of the Code was filed on behalf of the petitioners before the trial court for their discharge but after hearing the parties and perusing the materials on record, the court below refused to discharge them from the case and rejected the petition vide order dated 23.03.2015 which is under challenge in the present application.

8. Learned counsel for the petitioners has contended that there is no legal evidence against the petitioners for framing of charge. In course of investigation, all the witnesses upon whom the prosecution relies in order to prove its case have categorically stated that the petitioners are innocent and they have been implicated in the case by the informant at the instance of certain co-villagers with ulterior motive. He has contended that the informant is not a witness to the occurrence. The only allegation against the petitioners in the FIR is that they used to instigate K. Devi for demanding money from the husband of the informant. He has submitted that there was no



motive for the petitioners either to commit the offence or to instigate K. Devi to demand money from the deceased. It has been pointed out that there is no assertion by any witness about the role of the petitioners except the bald allegation made by the informant. In such circumstances, according to him, the materials relied on by the prosecution are not sufficient to frame charges against the petitioners. According to him, mere suspicion is not sufficient to frame charges. In this regard he has placed reliance on the judgments of the Supreme Court in *Union of India Vs. Prafulla Kumar Samal & Anr. [(1979) 3 SCC 4]* and *Dilawar Balu Kurane Vs. State of Maharashtra [(2002) 2 SCC 135]*.

9. On the other hand, learned counsel for the State after going through the police diary and other materials collected during investigation submitted that in the FIR the petitioners have been suspected to be involved in conspiracy of murder of the informant's husband. The informant has reiterated her version in subsequent statement recorded during investigation. However, she concedes that apart from the suspicion raised in the FIR, there is no other material to connect the petitioners with the alleged offence. She further concedes that almost all the witnesses, whose statements were recorded during investigation under section 161 of the Code have stated that the petitioners are innocent and they had no complicity in the alleged occurrence and their names were given by the informant

because they happen to be agnates of the deceased, and since the village is faction-ridden, some people having animosity towards them managed to mislead the informant.

10. I have carefully considered the submissions made by the respective counsel for the parties and have perused the case diary submitted by the police.

11. Before considering the claim of the parties, it is useful to refer to sections 227 and 228 of the Code, which are reproduced below :-

“227. Discharge –

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge -

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and

explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

12. It is clear that at the stage of section 227 of the Code the Judge concerned has to consider all the records of the case, the documents placed, hear the submissions of the respective parties and if there is **‘not sufficient ground’** (emphasis supplied) for proceeding against the accused, he shall discharge the accused by recording reasons. After such consideration and hearing, as mentioned in section 227 of the Code, if the Judge concerned is of the opinion that there is **‘ground for presuming’** (emphasis supplied) that the accused has committed an offence, he is free to direct the accused to appear and try the offence in accordance with the procedure after framing charge in writing against the accused.

13. In *Union of India Vs. Prafulla Kumar Samal & Anr.* [(1979) 3 SCC 4], the scope of section 227 of the Code was considered by the Supreme Court. After adverting to various decisions, the Supreme Court has enumerated following principles :

“(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

14. In Dilawar Balu Kurane (Supra), the principles enunciated in Prafulla Kumar Samal (Supra) have been reiterated and it has held in paragraph 12 as under :-

“Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the



accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India versus Prafulla Kumar Samal & Another (1979 3 SCC 5)].”

15. In *L. Krishna Reddy Vs. State by Station House Officer & Ors.* [(2014) 14 SCC 401], the fact of the matter was the bride was found murdered in a hotel room in Pondicherry. Her body bore several stab wounds. Thereupon, FIR was instituted against the husband and father-in-law and mother-in-law of the deceased under section 302 of the Indian Penal Code on 26th March, 2006 leading to filing of charge sheet no.59 of 2007 dated 31.05.2007 under sections 302, 498-A read with 34 of the Indian Penal Code before the court against the father-in-law and mother-in-law of the deceased. In course of investigation, the husband of the deceased committed suicide. In the police report, it was mentioned that as the husband had committed suicide by hanging and he is no more, charge against him is abated. At the stage of framing of charge though the public prosecutor had conceded that there appeared to be no direct involvement of the father-in-law and mother-in-law in the murder but the learned 3rd Additional Sessions



Judge, Pondicherry favoured the position that the proceeding should continue against the charge-sheeted accused persons. However, when the order of the learned Additional Sessions Judge was challenged before the High Court, it came to the contrary conclusion. The High Court opined that there was no sufficient material to proceed against the father-in-law and mother-in-law of the deceased and hence the in-laws of the deceased were discharged by the High Court. The informant of the case challenged the order passed by the High Court before the Supreme Court. In the said case, after hearing the parties, the Supreme Court observed in paragraphs 11 and 12 as under :-

“11. The Court is neither a substitute nor an adjunct of the prosecution. On the contrary, once a case is presented to it by the prosecution, its bounden duty is to sift through the material to ascertain whether a prima facie case has been established which would justify and merit the prosecution of a person. The interest of a person arraigned as an accused must also be kept in perspective lest, on the basis of flippant or vague or vindictive accusations, bereft of probative evidence, the ordeals of a trial have to be needlessly suffered and endured. We hasten to clarify that we think the statements of the complainant are those of an anguished father who has lost his daughter due to the greed and cruelty of his son-in-law. As we have already noted, the husband has taken his own life possibly in remorse and repentance. The death of a child even to avaricious parents is the worst conceivable punishment.

12. Since the prosecution would be an exercise in futility it should be brought to a quick end; and this is possible only if an order of discharge vis-à-vis the parents who are the remaining accused is passed.

This is exactly what has transpired in the wisdom of the High Court by means of the impugned Order. We find no error therein. Accordingly the appeal is dismissed.”

16. Keeping the above principles laid down by the Supreme Court in its decisions cited above in mind, I have carefully gone through the police diary of the case. I find that the statements of the witnesses, namely, Pratima Devi (mother of the deceased), Jitendra Kumar, Rajiv Kumar, Indramani Kuwar, Rintu Kumar, Udai Singh, Praveen Kumar, Kaushal Kumar, Supin Singh, Subodh Kumar and Dhiraj Kumar have been recorded in paragraphs 7, 8, 14, 15, 16, 17, 18, 19, 20, 128 and 129 respectively of the case diary. In their statements recorded under section 161 of the Code, they all have stated that the petitioners are innocent and have no concern with the alleged occurrence. Since they are agnates of the informant and the village is faction-ridden, their names have been dragged in the present case by the informant at the behest of some co-villagers having hostile relation with the petitioners. It would further be evident from perusal of the case diary that in paragraph 73, the confessional statement of one Roshan Singh has been recorded, in which he has admitted that he was having illicit relationship with the aforesaid K. Devi and at her instance he had killed the husband of the informant. Said Roshan Singh has not whispered a word about any role of the petitioners in the alleged offence.

17. After having reviewed the statements of the witnesses recorded under section 161 of the Code and the materials available on record, I find that apart from hypothetical presumption and wild suspicion raised by the informant, there is nothing else to indicate any complicity of the petitioners in the alleged offence of murder. On the contrary, there are statements of witnesses in the case diary to show that names of petitioners were given by the informant as a suspect in the case at the instance of some co-villagers due to hostility with ulterior motive. Each and every witness examined in course of investigation has given clean chit to the petitioners. In such circumstance, I fail to understand how the police could submit charge sheet against the petitioners. I also fail to understand how the court of Magistrate which took cognizance of the offence could find a prima facie case against the petitioners. It would further appear that at the stage of framing of charge there is no application of mind on the part of the court. Apparently, the trial Judge merely acted as a post office. I am, therefore, of the opinion that not to speak of grave suspicion against the petitioners, in fact the prosecution has not been able to throw any suspicion against them. In my considered opinion, even if the entire materials collected in course of investigation which the prosecution proposes to adduce to prove guilt of the petitioners is fully accepted before it is challenged in cross-examination or rebutted by the defence evidence cannot show that the petitioners

committed any offence.

18. In the light of the above discussions, I am of the view that no case worthy of trial has been made out. Accordingly, the application is allowed. The impugned order dated 23.03.2015 passed by the learned Adhoc Additional Sessions Judge V, Lakhisarai in Sessions Trial No.621 of 2014 arising out of Birupur P.S.Case No. 22 of 2012 is set aside and consequently the petitioners are discharged from the case.

(Ashwani Kumar Singh, J)

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