

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37871 of 2012

=====

1. Chandra Bhushan Jha S/O Late Ganesh Narain Jha R/O Vill-Dhanga,
P.S.-Nauhatta, Distt-Saharsa

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Chandra Mohan Jha

For the Opposite Party/s : Mr. Anuj Kumar Srivastava, APP.

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

3 26-02-2015

Heard.

2. The present petition seeks the quashing of order passed on 10.09.2012 in Sessions Trial No.221 of 2011 by the Adhoc 2nd Additional Sessions Judge, Saharsa by which he directed the charges under Sections 302,201 and 120B/34 Indian Penal Code to be framed.

3. A complaint petition was filed on 15.10.2007 alleging the commission of murder of Guddu Mishra in the night on 18.09.2007 between 10.30 and 11 P.M. In fact the deceased was found lying on a road with his motorcycle and he was picked up from there and was taken to Nauhatta hospital from where he was forwarded to Sadar Hospital, Saharsa, where he died. It appears that no postmortem examination was conducted and treating the death to be that induced by circumstances which may



not be constituting the facts for institution of a cognizable offence, the dead body was allowed to be cremated. After close of the investigation, the police submitted final form but the learned Magistrate differed with the investigating officer and took cognizance as a result of which the case was committed to the Court of Sessions.

4. After hearing the parties under Sections 227 and 328 Cr.P.C. and perusing the case diary, the learned trial Judge passed the impugned order. While passing the impugned order, the learned trial Judge was perusing paragraphs-6, 7, 27, 31 and 33 of the case diary and was holding that it appeared to him that the accused had committed the offences under Sections 302,201 and 120B/34 Indian Penal Code.

5. The carbon copy of the case diary is available to the Court and I have myself perused paragraphs-6,7,27,31,32 and 33 of it. The further statement of the informant is recorded in paragraph-6 and it has been stated that the deceased was returning from his Sasural at about 10 P.M. but he did not reach his home, the informant grew anxious. On 19.09.2007 in the morning, there was a *Hulla* that a man was lying near the bridge on the road and subsequently he learnt that it was his son Guddu Mishra. The informant went with his wife to the place of occurrence to find his



son lying there and shifted him to the hospital where he died. It has been categorically stated by the informant that he brought the dead body and did not even inform the police, thinking that it was an accident that the deceased had fallen from his two wheeler to receive injuries and to die in the hospital. But, subsequently he added up that his son was having affair with a girl named in the statement and his son had been threatened to be killed or to be treated in such a way as to be turned a handicapped permanently. Paragraph-7 of the case diary contains the statement of the mother of the deceased and that is also precisely in the same words. Paragraph-8 contains the statement of Murari Mishra and he has stated that the deceased was a drunkard who used regularly to be heavily drunk and his mother was serving as a nurse in a hospital and the deceased further indulged in bad habits and probably on account of having been drunk he had met with the accident. Paragraphs-32 and 33 are the statements of the two doctors who had treated him. They stated that the deceased died due to being heavily drunken and there was no external injury found on his person as appears from the statement of Dr. Amarnath Prasad. Likewise, the doctor examined in paragraph-33 has stated that the deceased was brought to hospital and he had advised him to be taken to Sadar Hospital, Saharsa, where he died.

6. The court below had considered the above materials only while directing the framing of charges as aforesaid.

7. The question of framing the charges has been an issue for consideration by courts. It had fallen for consideration in **AIR (1977) 4 SCC 39 State of Bihar v. Ramesh Singh** and it was held in paragraph-4 which reads as under:-

“4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under S. 227 or S. 228 of the Code. If "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", so enjoined by S. 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which.

.....
(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in S. 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding



the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S. 227 or S. 228, then in such a situation ordinarily and generally the order which will have to be made will be one under S. 228 and not under S. 227.”

8. As may appear from the above paragraph even if there could be sufficient reason raising grave suspicion against the

accused that he had committed the offence, then it could be a case for framing of charges. To illustrate the point the Supreme Court pointed to imagine balance put up and said that if the balance was hanging parallel to the ground without there being a tilt either towards the prosecution or the defence, it could be a case for framing of the charges.

9. On perusal of the materials available in the case diary, what is found is that there was no sufficient ground to presume that the accused had committed an offence which was exclusively triable by the court of Sessions. As such, the order dated 10.09.2012 passed in Sessions Trial No.221 of 2011 by the learned Adhoc Additional Sessions Judge, Saharsa appears not sustainable, which is hereby quashed as regards the present petitioner Chandra Bhushan Jha.

10. The petition succeeds and is allowed in the above terms. The stay which was granted by order dated 01.04.2013 is vacated.

(Dharnidhar Jha, J)

B.Kr./-

U		T	
---	--	---	--