

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17036 of 2015

Arising Out of PS.Case No. -253 Year- 2010 Thana -FORBESGANJ District- ARRARIA

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1. PRADEEP KUMAR BHAGAT @ PRADEEP BHAGAT Son of Late Shiv Nath Bhagat, resident of Mohalla- Dalmia Distributor, S.K. Road, Ward No.- 10, P.S.- Forbesganj, District- Araria

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri Krishna Nand Kumar son of Sri Prahlad Choudhary, resident of village- Bharat Khand, P.S.- Parbatta, District- Khagaria

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Navjot Yesu, Adv.

For the Opposite Party/s : Mr. Ajay Kumar Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-12-2015

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

2. By way of the present application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner seeks quashing of the order dated 27.01.2015 passed by the learned Adhoc Additional District & Sessions Judge- IV, Araria in Sessions Trial No. 159 of 2012 arising out of Forbesganj P.S.Case No. 253 of 2010, whereby and whereunder the petition for discharge filed by the petitioner under Section 227 Cr.P.C. has been rejected by the trial court. Further, by way of an Interlocutory Application bearing I.A. No. 1130 of 2015, the petitioner seeks an additional relief and prays

for quashing of the order dated 03.07.2015 passed in the aforesaid case whereby charges have already been framed against the petitioner under Sections 328 and 304-B/34 of the Indian Penal Code (for short 'IPC').

3. The petitioner has been made a named accused in Forbesganj P.S.Case No.253 of 2010 dated 26.07.2010 registered under Sections 328 and 304-B/34 of the IPC. On completion of investigation, the Investigating Officer submitted his report under Section 173(2) Cr.P.C. in the court of Jurisdictional Magistrate, who took cognizance of the offence and after supplying requisite papers in terms of Section 207 Cr.P.C., committed the case to the Court of Sessions for trial.

4. At the stage of framing of charge, an application under Section 227 Cr.P.C. for discharge from the case was filed on behalf of the petitioner. The said application has been rejected by the learned Adhoc Additional District & Sessions Judge IV, Araria vide impugned order dated 27.01.2015. During pendency of the application before this Court, the trial court has framed charges against the petitioner. By filing the Interlocutory Application, the petitioner has challenged the aforesaid order dated 03.07.2015.

5. It has been contended by the learned counsel for the petitioner that the impugned order dated 27.01.2015 rejecting the

application filed on behalf of the petitioner under Section 227 Cr.P.C. has been passed mechanically without application of judicial mind. It has rejected the application for discharge merely on the ground that the police have sent up the petitioner for trial after investigation and the Jurisdictional Magistrate has taken cognizance of the offence.

6. Learned counsel for the State concedes that the impugned order dated 27.01.2015 assigns no reason as to why the application for discharge is rejected.

7. I have heard the learned counsel for the parties and perused the record.

8. Sections 227 and 228 Cr.P.C. reads as under :-

“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.”

9. From a bare reading of the aforesaid two provisions of the Cr.P.C., it would be evident that the trial court must consider the materials on record and after hearing the submissions of the accused and the prosecution if the Judge considers that there is sufficient ground for proceeding against the accused, he shall frame charges. It is well settled principle of law that the Judge is not a mere Post-Office to frame charge but has to exercise his judicial mind to the facts of the case in order to determine whether or not a case for trial is made out by the prosecution. Sufficiency of the ground has to be assessed after perusing the allegations made in the FIR, statements of the witnesses recorded under Section 161(3) Cr.P.C. and the documents produced along with the police report submitted under Section 173(2) Cr.P.C.

10. In order to evaluate the legality of the impugned order dated 27.01.2015, it would be apposite to quote the same, which reads as under :-

“27.1.15:- अभियुक्त की ओर से प्रति आवेदन दाखिल किया गया जिसे सिर्फ आज हेतु स्वीकृत किया जाता है। अभियुक्त नियत तिथि को सदेह रहे। अभिलेख आज आदेश हेतु

उपस्थापित किया गया।

आदेश

सम्पूर्ण अभिलेख का अवलोकन किया। अवलोकन से विदित होता है कि प्रस्तुत अभियुक्त के विरुद्ध अनुसंधानकर्ता द्वारा दिनांक 13.12.2010 को धारा 328, 304/बी/34 भा०द०वि० के अंतर्गत आरोप पत्र समर्पित किया गया है। तत्पश्चात श्रीमान मुख्य न्यायिक दंडाधिकारी अररिया द्वारा उसी दिन अर्थात् दिनांक – 13.12.10 को पर्याप्त साक्ष्य के आधार पर अभियुक्त के विरुद्ध धारा 328, 304बी/34 भा०द०वि० के अंतर्गत संज्ञान लिया गया है। तदनुसार अभिलेख श्रीमान मुख्य न्या० दण्डा० द्वारा दिनांक १७.१२.२०११ को दौरा सुपुर्द कर सत्र न्यायालय को भेजा गया है। उपरोक्त तथ्यों से स्पष्ट है कि अभियुक्त द्वारा दाखिल दिनांक 12.4.12 का आवेदन तथ्यहीन एवं निरर्थक है। अतः अभियुक्त प्रदीप कुमार भगत द्वारा दाखिल दिनांक 12.4.12 के आवेदन को खारिज किया जाता है।

वाद दिनांक 26.2.15 वास्ते आरोप गठन के बिन्दु पर सुनवाई।”

11. After considering the submissions of the counsel for the parties and on going through the impugned order dated 27.01.2015, as quoted above, I find force and merit in the case set up by the petitioner. It would be apparent from the order that the trial court has not considered the materials available on record before rejecting the application of the petitioner filed under Section 227 Cr.P.C. and framing charge against him under Section 228 Cr.P.C. It's order is based on the consideration that the police found the allegation true during investigation and the Chief Judicial Magistrate took cognizance of the offences after going through the police report submitted under Section 173(2) of the Cr.P.C. and committed the case

to the court of Sessions. The order does not reflect that the trial Judge even remotely applied his judicial mind before passing the order.

12. In that view of the matter, the impugned orders dated 27.01.2015 and 03.07.2015 passed by the learned Adhoc Additional District & Sessions Judge- IV, Araria in Sessions Trial No. 159 of 2012, arising out of Forbesganj P.S.Case No. 253 of 2010, are set aside. The trial Judge is directed to hear the matter afresh and pass an appropriate order in accordance with law within one month from the date of receipt or production of a copy of this order.

13. The application is allowed with the aforesaid observations and directions.

(Ashwani Kumar Singh, J)

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