

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43440 of 2012

Arising out of PS.Case No.-38 Year-2006 Thana -Alipur District- GAYA

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1. Subidha Devi, Wife of Sri Deep Narain Rai.
 2. Arun Rai, Son of Sri Deep Narain Rai.
 3. Deepa Rai, Son of Sri Arjun Rai.
All residents of village Barsimha, P.S. Alipur, District Gaya.
 4. Anil Singh, Son of Sri Paras Singh.
Resident of Village Katauli, P.S. Hulasganj, District Jehanabad.
- Petitioners

Versus

1. The State of Bihar.
 2. Sangam Chaudhary, Son of Sri Jal Dhari Chaudhary, Resident of village Sarsa,
P.S. Sikandra, District Jamui.
- Opposite Parties
- =====

Appearance :

For the Petitioners : Shri Rana Pratap Singh, Sr. Advocate
For the State : Shri Khurshid Alam, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 16-04-2015

Heard Shri Rana Pratap Singh, the learned senior counsel appearing on behalf of the petitioners who were being tried in Sessions Trial No. 34 of 2012, pending before the learned Presiding Officer, Fast Track Court No. III, Gaya.

2. The petition raises an important question of law as to whether evidence recorded in a separated trial arising out of the same First Information Report could be perused while hearing under Sections 227/228 Cr.P.C. for allowing the prayer of an accused to discharge him from trial.

3. The Court has proceeded to decide the issue raised by Shri Singh, considering that this issue may be agitated

before various courts of sessions. Before I proceed to consider the issue, I want to be profited by having a glance of Sections 227 and 228 Cr.P.C. which run 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, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such 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."

4. As may appear from the very opening line of Section 227 Cr.P.C. the judge has to consider the record of the case and the documents submitted therewith. He has also to hear the submissions of the accused and the prosecution and then has to consider as to whether there was "not sufficient ground for proceeding against the accused". If he finds the grounds not

sufficient for proceeding against the accused then he has to discharge the accused and in that case he is required to assign reasons in support of his order.

5. In State of Bihar Vs. Ramesh Singh reported in AIR 1977 SC 2018, Justice Untwalia speaking for the Apex Court had observed in paragraph-4 of the report that Sections 227 and 228 Cr.P.C. have to be read in juxtaposition so as to arriving at a conclusion as to whether there was not sufficient ground for proceeding against the accused or there was ground for presuming that the accused had committed an offence which was exclusively triable by the Court of Sessions as is required to be recorded by a judge under Section 228 Cr.P.C. Considering the language of Sections 227 and 228 Cr.P.C., one could find that sufficiency of the ground is required to be found out so as to discharging the accused on reasons arising from the grounds itself whereas a mere ground was required to be noted by the judge so as to framing the charges. This Court is not concerned as to what could be the parameters of judging as to what could be 'not sufficient grounds for proceeding against an accused' or what could be the material for finding out the 'ground for presuming that the accused had committed an offence' rather the court is required to express its opinion as to what are materials which are required to be perused



and considered by the judge while proceeding under Sections 227 and 228 Cr.P.C. Before considering Sections 227 and 228 Cr.P.C., one has necessarily to go through the provisions of Sections 225 and 226 Cr.P.C. and on such consideration of the four provisions, i.e., Sections 225 to 228 what may appear is that the record of the case and the documents submitted therewith could be the materials to be perused and considered and that it could be nothing other than the police report as defined by Section 173(2) Cr.P.C. and the documents submitted therewith. The court in order to acting either under Section 227 or 228 Cr.P.C. has never to traverse beyond the record of the case and the documents submitted therewith. In other words, the court has to confine itself to the police report and the documents submitted by the police with it while it was hearing the parties under Sections 227 and 228 Cr.P.C.

6. An evidence recorded during trial, may be arising out of the same First Information Report which could have been registered on account of any reason, could not be the record of the case or the document submitted therewith as regards taking a decision under Sections 227 and 228 Cr.P.C. Such a material could be out and out extraneous to the consideration which has to be made by the judge while proceeding under Sections 227 and 228 Cr.P.C.



7. Shri Singh was submitting that the informant of the case had made a turn round as regards the First Information Report and had stated that he had filed a case under some misunderstanding and misinformation and the information was not correctly projecting the facts. This Court does not have any business to make any comment on the quality of that evidence of the informant except that which has just been pointed out by this Court, that is to say, that the evidence being an evidence in an appropriately conducted trial under Chapter-XVIII of the Cr.P.C. could not be the part of the case record or documents submitted therewith, that is, the police report and, as such, was completely outside the consideration of the Court. It has its own value and the value is to confront the maker of the statement, if he was to contest the trial on which the petitioners should be put on, to draw his attention to show the falsity of his evidence which might be coming during that trial. Except that particular use which could be made in the light of the provision of Section 145 of the Indian Evidence Act, that recorded evidence of the informant does not have any value as regards a judge proceeding under Section 227 or 228 Cr.P.C.

8. Judging the merit of the order dated 14.05.2012, passed by the learned Presiding Officer, Fast Track Court No. III,

Gaya in Sessions Trial No. 34 of 2012 on the above parameters,
this Court does not find any merit in the petition as there is no
requirement to interfere with the order. The petition is dismissed.
Let the trial court proceed with the trial.

(Dharnidhar Jha, J.)

Sanjay/A.F.R.

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