

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24082 of 2014

Arising Out of PS.Case No. -110 Year- 1992 Thana -GANDHIMAIDAN District- PATNA

- =====
1. **Panchanan Sharma**, S/o Late Krishna Kumar Singh, resident of Village Amhara, Police Station- Bihta, District Patna.
 2. **Krishna Prasad Singh**, S/o Late Brijnandan Singh, resident of Village Panchrukha, Police Station- Fatuha, District Patna.
 3. **Ram Dular Sharma**, S/o Late Raghunath Prasad Singh, resident of Village and Police Station-Pandarak, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. K. K. Sinha-Advocate

For the State : Mr. Jharkhandi Upadhyay-A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 3-03-2015

Petitioners have challenged order dated 13.03.2014 passed by Shri Ashutosh Khetan, Judicial Magistrate, 1st Class, Patna in Gandhi Maidan P. S. Case no.110 of 1992, G. R. No.1582 of 1992, rejecting the prayer of the petitioners purported to be under Section 239 of the Cr.P.C.

2. Petitioners, while were office bearers of Patliputra Central Co-operative Bank Limited indulged in different kinds of illegal activities detrimental to the bank whereunder they have illegally appointed 30 persons on daily wages, granted Rs.36,51,000/- to Patliputra Motor Transport Co-operative Society in partisan manner



contrary to by law, paid illegally against printing of stationery, vouchers etc., by Nutan Paper Audogic Sahyog Samiti Limited as well as Tanya Press and thus illegally siphoned the money. The Managing Director, after having the banks superseded, had filed written report to the aforesaid context whereupon instant case has been registered and investigation commenced. After concluding the investigation, chargesheet was submitted whereupon vide order dated 22.12.2007, cognizance was taken for an offence punishable under Sections 409, 420, 467, 468, 120B of the I.P.C. and petitioners were summoned against which Cr. Revision No.113 of 2008 was filed. At an earlier occasion while prayer for discharge was rejected vide order dated 13.07.2010, the same was challenged under Criminal Misc. No.32024 of 2010 wherein, vide order dated 18.05.2012, the order impugned was set aside and the matter remitted back to the learned lower Court to decide the issue, afresh. Whereupon, the learned lower Court had heard and by the order impugned dated 13.03.2014 rejected the prayer, hence this petition.

3. It has been submitted on behalf of petitioners that no offence is made out under the sections whereunder cognizance has been taken or any other sections. To support the same, it has been submitted that from the written report itself, it is evident that payment was made to Nutan Paper Audogic Sahyog Samiti Limited as well as



Tanya Press against the bills submitted by them on account of printing of relevant stationeries as per requirement. It has further been submitted that so far sanction and grant of loan to Patliputra Motor Transport Co-operative Society is concerned, it is evident from the written report itself that Rs.36,51,000/- was disbursed as loan amount, out of which, the major portion was repaid and on the date of filing of written report that means to say, 25.03.1992 only Rs.19,56,000/- remained due apart from the fact that loan was advanced in accordance with law after following all norms.

4. It has further been submitted that with regard to allegation of appointment of 30 persons on daily wages those appointments were need of the hour as much as, the same has been found legal one in the background of the fact that after termination of service of those persons, they have gone before Labour Court and vide Annexure-3, their appointments were regularized. Furthermore, the aforesaid judgment was challenged under C.W.J.C. No.2600 of 1998 and was concurred thereunder. The aforesaid judgment was also challenged by the State under L.P.A. No.1514 of 2009 (Annexure-5) which, lastly dismissed as withdrawn (Annexure-5/1).

5. It has further been submitted that against the order of cognizance, Cr. Revision No.113 of 2008 was filed before this Court wherein the aforesaid events were taken note of and while disposing

of the Cr. Revision, it has been observed that all these matters be raised at the time of framing of charge (Annexure-10).

6. So submitted that in the aforesaid background, neither creation of forged and fabricated documents could be suggested nor there could be event of misappropriation. So, submitted that rejection of petition by the learned lower Court, to discharge, is illegal as well as contrary to observation laid down by the Revisional Court vide order dated 29.05.2008 passed in Cr. Revision No.113 of 2008.

7. It has also been submitted that petitioners were office bearers of Patliputra Central Co-operative Bank Limited, duly constituted body in accordance with Bihar Co-operative Bank Society's Act, 1935 and on account thereof, they would not be liable to be prosecuted, because of the fact that whatever allegations have been attributed against them, are not in their individual capacity.

8. It has further been submitted that learned lower Court had done grave error in rejecting the prayer of the petitioners against the principle laid down by the *Hon'ble Apex Court in Century Spinning & Manufacturing Co. Ltd. (In Cr. A. No.63 of 1970) Ram Prasad Poddar and others, (In Cr. A. No.64 of 1970), Appellants v. The State of Maharashtra reported in A.I.R. 1972 (SC) 545 as well as State of Karnataka v. L. Muniswamy and others reported in*

A.I.R. 1977 SC 1489 and being so, the order impugned is fit to be set aside.

9. Per contra, it has been submitted on behalf of learned Additional Public Prosecutor refuting the submissions made on behalf of petitioners that at an earlier occasion while setting aside the order dated 13.07.2010 under Cr. Misc. No.32024 of 2010 (Annexure-1), the matter was remitted back to the learned lower Court to decide afresh in terms of requirement of Section 239 of the Cr.P.C. From the order impugned, it is apparent that learned lower Court had acted in accordance therewith, had gone through the materials collected during course of investigation having available in the case diary and then, had concluded presence of prima facie case pointing out complicity of petitioners whereunder they, by their illegal act, defrauded the bank. As such, the order impugned is fit to be confirmed.

10. In order to appreciate the legal grounds taken up by the petitioners, let a glance thereof be made in ***Ram Prasad Poddar and others v. The State of Maharashtra A.I.R. 1972 SC 545*** which relates with Section 251 (A) of under Old Cr.P.C. wherein, at Para-15 the Hon'ble Apex Court held:-

“Though at the bar of this Court as also in the High Court considerable arguments and discussion centered round this point, in our opinion the construction and meaning of this section so far as

relevant for our purpose does not present any difficulty. Under sub-section (2), if upon consideration of all the documents referred to in Section 173, Criminal P.C. and examining the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has to be read along with sub-section (3), according to which, if after considering the documents and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chapter XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two subsection together it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges. This necessarily depends on the facts and circumstances of each case and the Magistrate is entitled and indeed has a duty to consider the entire material referred to in sub-section (2). On the view that we have taken, we do not consider it necessary

to refer to the various decided cases cited at the bar of this Court or discussed in the judgment of the High Court.”

11. In *State of Karnataka v. L. Muniswamy and others* reported in A.I.R. 1977 SC 1489, the matter under consideration was staged under Section 227 Cr.P.C. and been explained under:-

7. The second limb of Mr. Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:-

"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. "This Section is contained in Chap. XVIII called "Trial before a Court of Sessions." It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceedings against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the new Code, which corresponds to S. 561-A of the Code of 1898, provides that:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. "In the exercise of this wholesome power,



the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has not to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.

12. After going through the same, it is apparent that at



the time of framing of charge, the Magistrate has to go through the materials placed by the police in terms of Section 173 of the Cr.P.C., hear both the parties and in case, comes to the conclusion that charge to be groundless, he will discharge the accused contrary to it, will frame charge. There is no contrary view on this score as subsequently the Hon'ble Apex Court while elaborating the same, took the relevant provisions relating to different natures of trial also considered earlier relevant pronouncement including the citation referred by the petitioner and explained in ***Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another reported in (2013) 11 SCC 476*** wherein:-

12. The case at hand being a warrant case is governed by Section 239 of the Cr.P.C. for purposes of determining whether the accused or any one of them deserved to be discharged. Section 239 is as under:

“239. When accused shall be discharged.-If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless,

he shall discharge the accused, and record his reasons for so doing.”

A plain reading of the above would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless.

13. *Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him.*

14. *The ambit of Section 239 Cr.P.C. and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr. (2008) 2 SCC 561. That too was a case in which a complaint under Sections 498-A and 406 read with Section 34 of the I.P.C. was filed against the husband and parents-in-law of*

the complainant-wife. The Magistrate had in that case discharged the accused under Section 239 of the Cr.P.C, holding that the charge was groundless. The complainant questioned that order before the Revisional Court which directed the trial Court to frame charges against the accused persons. The High Court having affirmed that order, the matter was brought up to this Court.

15. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong

suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

(emphasis supplied)

16. *Support for the above view was drawn by this Court from earlier decisions rendered in State of Karnataka v. L. Muniswamy 1977 Cri.LJ 1125, State of Maharashtra & Ors. v. Som Nath Thapa and Ors. 1996 Cri.LJ 2448 and State of M.P. v. Mohanlal Soni 2000 Cri.LJ 3504. In Som Nath's case (supra) the legal position was summed up as under:*

“32.....if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone

into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

(emphasis supplied)

17. So also in Mohanlal’s case (supra) this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the Court prima facie finds that there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in Mohanlal’s case (supra) is in this regard apposite:

“7. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

18. In State of Orissa v. Debendra Nath Pandhi (2005) 1 SCC 568, this Court was considering whether the trial Court can at the time of framing

of charges consider material filed by the accused. The question was answered in the negative by this Court in the following words:

“18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced...Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the Object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the

stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

xx xx xx xx

23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material..."

(emphasis supplied)

19. *Even in Smt. Rumi Dhar v. State of West Bengal & Anr. (2009) 6 SCC 364, reliance whereupon was placed by counsel for the*

appellants the tests to be applied at the stage of discharge of the accused person under Section 239 of the Cr.P.C., were found to be no different. Far from readily encouraging discharge, the Court held that even a strong suspicion in regard to the commission of the offence would be sufficient to justify framing of charges. The Court observed:

“17...While considering an application for discharge filed in terms of Section 239 of the Code, it was for the learned Judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.”

20. *To the same effect is the decision of this Court in Union of India v. Prafulla Kumar Samal and Anr. v. (1979) 3 SCC 4, where this Court was examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under:*

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(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 which under the present Code is a senior and experienced 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.”

13. In ***State of Tamil Nadu by Inspector of Police Vigilance and Anti-corruption v. N. Suresh Rajan and others with State represented by Deputy Superintendent of Police Vigilance and Anti-corruption v. K. Ponmudi and others reported in (2014) 11 SCC 709*** the aforesaid issue again been tested and held:-

30. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. vs. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

“15, ‘11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the

alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

31. *Now reverting to the decisions of this Court in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a*

police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused.

31.1. *Under Section 227 of the Code, the trial court is required to discharge the accused if it “considers that there is not sufficient ground for proceeding against the accused”. However, discharge under Section 239 can be ordered when “the Magistrate considers the charge against the accused to be groundless”. The power to discharge is exercisable under Section 245(1) when, “the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction”.*

31.2. *Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.*



14. The principle as conclusively framed and laid down directing perusal of the documents submitted in terms of Section 173 Cr.P.C. and then, forming an opinion whether those materials are insufficient/ sufficient enabling the Court to form an opinion whether the charge happens to be groundless as well as contrary to it. Therefore, it happens to be opinion of the Magistrate which has got primacy while acting in terms of Section 239 and 240 of the Cr.P.C. and the superior court would not be justified to thrust its own opinion, unless the order appears to be perverse.

15. Now, coming to the facts of the case, though elaborate discussion is forbidden as it will prejudice the interest of petitioners, but suffice it to say that whether payment made in favour of Nutan Paper Audogic Sahyog Samiti Limited as well as Tanya Press were under fake bills or was a genuine one cannot be looked into at the present stage as the same requires thorough appreciation which could only be possible during trial. In likewise manner, the activity of the petitioners while sanctioning loan of Rs.36,51,000/- to Patliputra Motor Transport Co-operative Society happens to be, whether aforesaid amount was sanctioned defying the norms in collusive manner to give undue privilege/ advantage is to be seen during course of trial alone. With regard to appointment of 30 persons on daily wages, it is apparent that Labour Court had allowed prayer on

the subsequent event whereunder their services were terminated after having such a long tenure of their identity (more particularly more than 120 days) as daily wages employee. Apart from the fact that out of 30 persons, only 19 contested as is evident from Annexure-3 and Annexure-4 with regard to remaining, the matter needs complete adjudication and appreciation which is possible only during trial.

16. Accordingly, I do not see any sort of illegality in the order impugned. Consequent thereupon, instant petition lacks merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

Vikash/-

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