

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18924 of 2015

Arising Out of PS.Case No. -92 Year- 2013 Thana -KHUSRUPUR District- PATNA

- =====
1. Kanti Devi Wife of Late Sadhu Sharan Singh
 2. Sanjay Kumar S/o Late Sadhu Saran Singh Both resident of village –
Kaimpur, P.S. Khosarupur, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Pravesh inghl son of Butul Singh, R/O Lodipur Mansurpur,.P.S.
Khusrupur, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Krishna Prasad Yadav

For the Opposite Party/s : Mr. Pushpa Sinha 2 (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 24-07-2015 Heard learned counsel for the petitioners, learned
counsel for O.P.No.2 along with learned Additional Public
Prosecutor.

The petitioners have challenged the order dated
19.2.2015 passed by the Additional Sessions Judge, IV, Patna
City in connection with Sessions Trial No.1058 of 2014 whereby
and whereunder the prayer made under Section 227 Cr.P.C. has
been rejected.

It has been submitted on behalf of the petitioners that
no cogent and reliable material has been collected by the
Investigating Officer during course of investigation and on
account thereof, there happens to be complete absence of legal
evidence on the record to justify framing of charge against the
petitioners. Further, highlighting, it has been submitted that
deceased Sanju Devi was earlier married with elder brother of
petitioner Sanjay Kumar, namely, Babloo Kumar, who just after a
year of marriage, died. Subsequently, the prosecution party in

collusion with the co-villagers of petitioners, coerced and succeeded in getting forcible marriage in between Sanjay Kumar as well as deceased Sanju Devi. However, that was never consummated. That being so, deceased could not be said to have enjoyed the status of wife of petitioner Sanjay Kumar. On account thereof, identifying petitioner Sanjay Kumar to be her husband and further allowing the prosecution on that very score, would not be maintainable.

Apart from this, it has also been submitted that from the statements of the witnesses, it is apparent that Sanjay Kumar had re-married and on account thereof, deceased became depressed and on her own, she committed suicide. None was responsible for the same. As such, petitioners could not be prosecuted over abetment of the suicide.

Not only this, it has also been submitted that no specific allegation has been attributed by the prosecution party against the petitioners. Therefore, on vague allegation, charge would not be allowed to be framed against the petitioners. It is in the aforesaid background submitted that the order impugned is fit to be set aside.

On the other hand, learned Additional Public Prosecutor along with learned counsel for O.P.No.2, opposed the prayer and submitted that after going through the statements of the witnesses along with materials having collected during course of investigation as well as available on the record, would justify the order impugned.

Two kinds of statements are available in the case dairy. The first one belonging to prosecution party who happens to be Naihar-men as well as relations who have supported the case of



the prosecution to the extent of marital status, demand of dowry, torture and further, the ultimate result culminating murder of the deceased by burning. The after set of material happens to be statement of co-villagers of the petitioners who had also stated regarding death of the deceased by means of burn. However, it is stated that she was married with Babloo Kumar and after his death, in duress and rigors having imposed at the end of the prosecuting party along with villagers, deceased was married with petitioner Sanjay Kumar but she was not at all recognized. Thereafter Sanjay Kumar got himself married and being frustrated thereupon, deceased had committed suicide. It is also apparent from their statements that since before the occurrence, the first round of litigation was there on the score of cruelty, however was patched.

What are the criteria to be followed up by learned trial court while dealing with the stage of Section 227 as well as 228 of the Cr.P.C, has been subject to adjudication before the Hon'ble Apex Court in the case of Amit Kapoor Vs.Ramesh Chander and another reported in (2012) 9 SCC 460 and the relevant paragraphs are as follows:

“17.- Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such.



The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine quo non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.”

“19.- At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar V. Ramesh Singh : (SCC pp.41-42, Para 4)

“4. Under Section 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 Section 227 or Section 228 of the Code. If ‘the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing’, as enjoined by Section 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 Section 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 Section 227 or Section 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 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 also at the initial stage of making an order under Section 227 or Section 228,

then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”

After having perusal of the materials on record in consonance of the principles laid down by the Apex Court in the case of Amit Kapoor (supra), it is apparent that for the present, there happens to be sufficient material for framing of charge. However, detailed discussion is forbidden so that interest of petitioners should not found jeopardized. Consequent thereupon, instant petition is found devoid of merit and accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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