

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 30195 of 2013

Arising Out of PS.Case No. -60 Year- 2007 Thana -SHEOHAR District- SHEOHAR

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Rajesh Kumar S/O Late Prahlad Das R/O - Mohalla Purani, Gudri Road, P.S-
Town, District- Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. Shivendra Pd. Singh S/o Shahdeo Prasad, Village Adhauri, P.S. Purnahia,
District – Shivhar.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Mishra, Adv.
For the Opposite Party/s : Mrs. Pronati Singh , A.P.P.
Mr. Arun Kumar Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 17-05-2017

Heard Sri Anil Kumar Mishra, learned counsel for the petitioner, Smt. Pronati Singh, learned Addl. Public Prosecutor as well as Sri Arun Kumar Choudhary, learned counsel, who has appeared on behalf of informant/opposite party no. 2.

2. The petitioner has approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), with a prayer to quash an order dated 12-04-2013 passed in Tr. No. 436 of 2013 (arising out of Sheohar P.S. Case No. 60 of 2007) by the learned Judicial Magistrate 1st Class, Sheohar (hereinafter referred to as 'Magistrate'). By the said order, the learned Magistrate has rejected



the petition filed on behalf of petitioner under Section 239 of the Cr.P.C. for his discharge.

3. Earlier, by order dated 22-07-2013, a Bench of this Court in the present case had summoned case diary and while summoning case diary, it was directed that till further orders, further proceeding in connection with Sheohar P.S. Case No. 60 of 2007 in connection with Tr. No. 436 of 2013 pending in the court of learned Judicial Magistrate 1st Class, Sheohar shall remain stayed. After obtaining order of stay, on one way or the other, the petitioner got the case adjourned and thereafter, on 20-06-2016, since none had appeared on behalf of the petitioner either to press the petition or to make a prayer for adjournment, this Court, on the basis of materials available on record, dismissed the petition. After the order of dismissal of the petition, the petitioner approached the Hon'ble Apex Court by filing an appeal, vide Criminal Appeal No. 1229 of 2016. Since the quashing application of the petitioner was rejected in absence of learned counsel for the petitioner, the Hon'ble Apex Court set aside the order of this Court dated 20-06-2016 and remitted back the matter for fresh consideration. The order of the Hon'ble Apex Court dated 14th December, 2016 is quoted here-in-below (Flag 'X'):-

"Leave granted.



In this case, notice was issued limited to the aspect that as to whether case can be remitted to the High Court for reconsideration as the High Court has dismissed Criminal Miscellaneous Petition No. 30195 of 2013 on the ground that no body appeared on behalf of the appellant. After going through the matter, we are of the opinion that the appellant had sufficient cause for non-appearance as given. The impugned order is, therefore, set aside and the matter is remitted to the High Court for fresh consideration on merits.

The appeal is disposed of accordingly.”

4. The order of the Apex Court was perused by this Court on 08-02-2017 and thereafter, it was directed for listing the case under appropriate heading. Again, on 15-02-2017, when the matter was taken up, a prayer was made on behalf of the petitioner for adjourning the case and listing the case in the month of March, 2017. Thereafter, the matter was taken up.

5. Sri Mishra, learned counsel for the petitioner has argued that the present case was instituted by informant only with a view to create a defence in a case, which was initiated as per instance of the Manager of the petitioner's company against the informant. He submits that even at the time of charge, petitioner had brought this fact to the notice of the learned Magistrate that in Sheohar P.S. Case No. 35 of 2007, the informant of the present case



was made accused, in which even discharge petition of informant of the present case was rejected. In sum and substance, it has been argued that the present case was instituted maliciously with a view to create a defence. He further submits that initially, the informant of the present case had filed a complaint, vide Complaint Case No. 70 of 2007, which was filed on 04-04-2007. The said complaint was referred to the police for investigation and its registration under Section 156 (3) of the Cr.P.C. and thereafter, a police case, vide Sheohar P.S. Case No. 60 of 2007, was registered against the petitioner on 21-05-2007 for offence under Sections 406/420 of the Indian Penal Code. He submits that since there was complete false accusation against the petitioner, after investigation, police exonerated the petitioner and submitted final report, vide Final Report No. 115/2008 dated 30-09-2008. However, on being asked, learned counsel for the petitioner has not disputed that even after submission of final report, the learned Sub-Divisional Judicial Magistrate, Sheohar (hereinafter referred to as 'S.D.J.M.') differing with the police report, had taken cognizance of offence and proceeded with the case. He submits that once during statutory investigation, case was not found true, there was no reason to proceed against the petitioner, that too in a situation, where prior to lodging of the present case, from petitioner's side, a case was



instituted against the informant of the present case. On aforesaid ground, a prayer has been made to quash the order of rejection of discharge petition and it has been prayed to discharge the petitioner from the said case.

6. Learned Addl. Public Prosecutor as well as learned counsel for the informant have vehemently opposed the prayer of the petitioner. It was submitted by learned counsel for the informant that submission of final report has got no relevance at this stage. He submits that though in the case diary, there was sufficient material, police exonerated the petitioner and submitted final report. The said error, committed by the police, was noticed by the learned S.D.J.M. and the learned S.D.J.M., after examining the case diary particularly its paragraph nos. 12, 13, 24, 27, 36, 40 and 41, which suggested accusation against the petitioner, on 27.10.2010 passed order of cognizance differing with the police report. It was argued by learned counsel for the informant that petitioner never challenged order of cognizance and while the case reached to the stage of charge, only with a view to further delay the proceeding, the petitioner filed number of petitions before the court below for discharge. According to learned counsel for the informant as well as learned Addl. Public Prosecutor, apparently in the order rejecting discharge petition, there is no error warranting interference.



7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In this case, earlier case diary was also summoned, which has been kept on record. Besides hearing the parties, I have also examined the case diary. Ofcourse, at the time of hearing of a petition filed against the rejection of discharge petition, there was no requirement to examine the case diary in detail, but since the matter was remitted back by the Hon'ble Apex Court, this Court has personally examined the case diary, particularly those paragraphs, which have been referred to by the learned Magistrate while rejecting the discharge petition. On going through the order impugned, the Court is satisfied that there is no apparent error warranting interference. Time without number, it has been held that in a criminal case, only *prima facie* case is required to be examined. If there is material on record to draw an inference regarding commission of offence, that is sufficient for coming to the conclusion that *prima facie* case is made out. If there is a *prima facie* case, there is no reason to discharge an accused. The word "*prima facie*" was elaborately discussed by the Hon'ble Apex Court in a case reported in **1996 Criminal Law Journal 2448 (State of Maharashtra vs. Som Nath Thapa)**. It would be appropriate to quote paragraph nos. 30, 31 and 32 of the judgment of the Apex Court, which are as follows:-



"30. In Antulay's case, (AIR 1986 SC 2045), Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence".

31. Let us note the meaning of the word "presume". In Black's Law Dictionary, it has been defined to mean "to believe or accept upon probable evidence". (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition.

32. The aforesaid shows that 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 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.”

8. Besides this, on number of occasions, the Apex Court has observed that superior courts should refrain from interfering at initial stage. Even in a case reported in **1995 Criminal Law Journal 2935 (Ganesh Narayan Hegde vs. S. Bangarappa and others)**, the Hon’ble Apex Court has used word “Admonition” against the superior court in interference at initial stage. It would be appropriate to quote paragraph – 18 of the said judgment, which is as follows:-

“18. With respect to the contention of the learned counsel for the respondents that after a period of twelve years, the matter should not be allowed to be proceeded with we must say that the complainant is certainly not responsible for this delay. The learned counsel did not even made such a suggestion. Moreover, this contention does not appear to have



been raised before the High Court. (The judgment of the High Court is dated 16.6.92.) We do not know who is responsible for this delay. As observed by Krishna Iyer, J. in In Re.: The Special Courts Bill, 1978, (1979) 1 SCC 380 at page 442 : (AIR 1979 SC 478 at p. 523): "(I)t is common knowledge that currently in our country criminal Courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and still more exasperating there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions....". The slow-motion becomes much slow-motion when politically powerful or rich and influential persons figure as accused. F.I.Rs. are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage or trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence disappears; the prosecution loses interest - the result is an all too familiar one. We are sad to say that repeated admonitions of this Court have not deterred superior Courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course. In the circumstances, we cannot accede to the said contention."

9. The present case is also similar. In this case FIR was



lodged in the year 2007 and till date case has reached at the stage of charge only. So far as the ground taken by learned counsel for the petitioner that in retaliation, the present case was instituted, this Court is of the opinion that those points may not be examined at this stage. If so advised, the petitioner can take such pleas at the stage of defence itself, not at the stage of charge. At the stage of charge, normally, only those materials are required to be noticed, which are on record or which are available in the case diary. Since in the case diary, there was material for forming an opinion by the learned court below regarding *prima facie* case, I do not find any ground for interference with the order impugned.

10. So far as discharge is concerned, in a criminal case, trial is the rule and discharge is exception. Even Section 227 or 239 of the Cr.P.C. only indicates that if the Trial Judge considers to discharge an accused, he is required to assign reason. Meaning thereby that at the time of rejection of discharge petition, there is no statutory obligation to assign detailed reason, whereas in the present case, the learned Magistrate has also assigned reason.

11. The petition stands dismissed.

12. Considering the fact that case was instituted long back in the year 2007 and till date charge has not been framed, while dismissing the present petition, it is desirable to observe that



learned court below may take appropriate step so that the case may come to its logical end without unnecessary delay.

(Rakesh Kumar, J.)

Anay

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