

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23556 of 2016

Arising Out of PS.Case No. -183 Year- 1998 Thana -LAHERIMUHALLA District- NALANDA
(BIHARSHARIFF)

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RAM SAGAR PRASAD, S/O RAM KHELAWAN LAL, R/O KATHAL
TOLA, SOHSARAI, BIHARSHARIF, P.S.- SOHSARAI, DISTRICT-
NALANDA.

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s	:	Mr. Arvind Kumar Sharma, Adv. Mr. Pramod Kumar Sinha, Adv. Mr. Bijay Kumar Sinha, Adv.
For the State	:	Mr. B.N. Pandey, APP.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 04-08-2016

Heard learned counsel for the petitioner as well as learned
Additional Public Prosecutor.

After framing of charge vide order dated 29.04.2016
petitioner/accused Ram Sagar Prasad has challenged the same relating to
Sessions Trial No.395 of 2005 pending before Seventh Additional Sessions
Judge, Nalanda at Biharsharif.

The learned counsel for the petitioner has submitted that in
spite of having his prayer rejected in terms of Section 227 of the Cr.P.C. as
well as having been affirmed by this Court, even then, the court was under
obligation to search out the materials and further, on that very basis would
have formed an opinion whether to proceed against an accused or not, that
means to say against the petitioner. So, the learned lower court without doing
such exercise proceeded ahead and framed the charge by the order impugned,
happens to be contrary to the spirit of law. Apart from this, it has also been
submitted that presence of petitioner stood on the basis of inculpatory extra
judicial statement of co-accused who, during their confessional statement
disclosed the fact that booty was sold at a shop which was duly identified by
them belonging to the petitioner whereupon raid was conducted but, nothing

was recovered. Therefore, neither an offence punishable under Section 395 of the IPC is made out nor, on account of non-recovery of booty from the possession of the petitioner, Section 412 is applicable. Thus, framing of charge against the petitioner happens to be based upon virtually in absence of any kind of material. Therefore, is fit to be set aside. To substantiate the same the learned counsel for the petitioner also referred AIR 1990 SC 1962, AIR 2007 SC 2149 as well as 2008 Cr.L.J. 2903.

The learned Additional Public Prosecutor opposed the same.

Just after commitment of a case on account of being exclusively triable by the court of session and further, after appearance of the accused, in terms of Section 226 of the Cr.P.C. the prosecutor is under obligation to open its case and further, will also disclose by which evidence he is going to prove the persecution case. Subsequent thereof, the stage of 227, 228 Cr.P.C. comes and during course thereof, the court has to see whether from the materials having available on the record, being sufficient in nature ultimately allowing the trial to be proceeded against the accused otherwise if in the opinion of the court, the materials so available on the record is found deficient one than of sufficient one then in that event, the accused will be discharged. Even at the state of framing charge the court has to perceive whether the offences so made out is to be exclusive triable by the court of Session, then in that event, in terms of Section 228(1)(b) of the Cr.P.C. will frame the charge and proceed with the trial in an alternative, tracing out the offences not exclusively triable by the court of Session, will frame charge and transmit the matter to the lower court in terms of Section 228(1)(a) of the Cr.P.C. That being so, stage of 228 Cr.P.C. will come into play only after appraisal of the materials by the court whereupon, negating the discharge of the accused identifying sufficient material on the record. For better appreciation Section 228 Cr.P.C. is quoted below:

“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.”

As disclosed, the prayer of the petitioner in terms of Section 227 Cr.P.C. stood rejected at an earlier occasion and further, having been affirmed by the High Court and as petitioner failed to challenge the order of the High Court, met with finality. That being so, absence of sufficient material has been ruled out while doing exercise under Section 227 Cr.P.C. Once it has been ruled out, the ultimate conclusion will be with regard to presence of sufficient material. Once the same is found, the ultimate resultant will be framing of charge. That being so, the learned lower court had rightly framed the charge.

Learned counsel for the petitioner referred relevant para of the aforesaid citations which did not deal with the peculiarity visualizing in the present case. In those decisions petition under Section 227 Cr.P.C. was not at all rejected followed with finality and on account thereof, are not applicable under the present facts and circumstances of the case.

Accordingly, instant petition lacks merit and is rejected.

(Aditya Kumar Trivedi, J.)

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