

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25133 of 2013

Arising Out of PS.Case No. -108 Year- 1987 Thana -DHARHARA District- MUNGER

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1. SRI KANT KUNWAR @ SRI KANT KUMAR, S/O LATE NATHEY KUMAR ON THAT TIME POSTED AS ASSISTANT ENGINEER "RUPA KAND DIVISION NO.3, BHAGALPUR RESIDENT OF MOHALLA- HANUMAN NAGAR, P.S.- ADAMPUR, DISTRICT- BHAGALPUR

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance :

For the Petitioner/s : Mr. Sujit Kumar Singh--Advocate

For the Opposite Party/s : Mr. Md. Aslam Ansari (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 12-05-2016

Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor.

By the order impugned dated 01.04.2013, the learned lower Court had rejected the prayer made on behalf of petitioner under Section 239 Cr.P.C. relating to G.R. Case No.1795 of 1987 pending before Mr. Sunil Kumar Singh, Judicial Magistrate, 1st Class, Munger, led institution of present petition.

At an initial stage, Ambika Prasad, Srikant Kunwar (petitioner) and Kedar Nath Choudhary were shown to be accused for misappropriating the government money in connivance with contractor by having interpolation in the respective measurement book. It is also evident that after investigation, chargesheet had already been submitted though, during course of investigation, the



informant had filed petition before the Officer-in-Charge of concerned P.S. disclosing the fact that during course of examination of relevant materials by the Department itself, Srikant Kunwar has been found innocent whereupon he be exonerated from the Column-2 of the accused and further, rectified by having identification of one co-accused, Sujay Chand Kishore.

From the order impugned, it is evident that learned lower Court had traced out certain statement of the witnesses, who identified the petitioner to be innocent while others have pinpointed him along with others to be the culprit and in the aforesaid background, perceiving the settled principle of law that where suspicion is found, charge could be framed, rejected the prayer.

Section 239 of Cr.P.C. in consonance with Section 240 of Cr.P.C., identify the exercise to be conducted by the Court concerned while scrutinizing the materials at the relevant stage, did ultimately resultant to be a groundless, will ultimately give a passage of applicability of Section 239 Cr.P.C. and contrary to the same, will attract applicability of Section 240 Cr.P.C. This “groundless” has been perceived by the Hon’ble Apex Court in a manner, that it may cover the grave suspicion, not mere suspicion as held by the learned lower Court. Apart from this, the learned lower Court also failed to see the case diary and further, the

materials collected in the background of Letter No.20 (Confidential) dated 23.12.1987 whereunder petitioner's presence as an accused was erased at an initial stage.

In *State of Tamil Nadu vs. N. Suresh Rajan and others with State vs. K. Ponmudi and others reported in (2014) 11 SCC 709*, it has been held:-

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the



materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

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: (Sheoraj Singh Ahlawat Case (2013) 11 SCC 476, SCC p. 482, para 15)*



*“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.”*

(Onkar Nath Case (2008)2 SCC 561, SCC p. 565, para 11).” (emphasis in original)

Therefore, the learned lower Court was expected to appreciate the material available on record to come to the finding that still at least grave suspicion was there attracting prosecution

of the petitioner.

Accordingly, instant petition is allowed and order impugned is set aside with the aforesaid observation.

(Aditya Kumar Trivedi, J)

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