

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24468 of 2013

Arising Out of PS.Case No. -297 Year- 1998 Thana -KATIHAR District- Katihar

1. Vijay Kumar Thakur Son Of Sri Mahanand Thakur, Resident Of Village-
Maldwar, P.S.- Palasi, District- Araria, At Present Working As Clerk,
Araria College Araria At Araria, P.S. And District- Araria

.... Petitioner/s

Versus

1. The State Of Bihar through Vigilance

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Jha, Advocate
Mr. Subhash Kumar Jha, Advocate
For the Vigilance : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rabindra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 09-05-2016 Heard learned counsel for the petitioner as well as
learned counsel for the Vigilance.

The petitioner, one of the accused having been refused by the learned lower court to be discharged vide order dated 29.04.2013 in Special Case No. 3/99 pending before Special Judge, Vigilance II, Patna has preferred instant petition.

In order to properly appreciate the facts of the case in consonance with the point having been raised on behalf of the petitioner, the informant, a police official having been informed confidentially regarding mal-practices being played at the hands of the accused during course of teachers training examination and on account thereof, there was ruckus, police came into



action and a raid was conducted wherefrom one lady was apprehended and different items including huge amount of cash as disclosed in the seizure list were seized. Furthermore, it has also been disclosed that on enquiry, the aforesaid lady disclosed that the events were being managed by the Principal, Milliyya Fakhruddin Ali Ahmed, B.Ed., Teacher Training College, Purnea as well as the Registrar, B.N.Mandal University. She had further disclosed that seized seal, pad was brought by one Tabarak Kareem @ Tabarak Kareem. It has further been disclosed that Rs. five lacks having been collected from the examinee have already been taken away by the Secretary. It has further been disclosed that subsequent event was being managed by Vijay Thakur, Asgar Imam, Nasim Akhtar, C.K. Pankaj, driver and others.

The learned counsel for the petitioner has submitted that save and except, the name of the petitioner having been disclosed by a co-accused, the police failed to collect any sort of material during course of investigation and that happens to be the reason behind that while considering the prayer of the petitioner, the learned lower court has simply rejected without referring single para of the case diary. Furthermore, it has also been submitted that for the purpose of framing charge, the statement of the co-accused could not be taken into



consideration. It has further been submitted that so many accused persons have raised their grievances but, the learned lower court without verifying the plea of individual accused, in consonance with the material so collected by the Investigating Officer, during course of investigation, in vague manner, rejected the same. So, submitted that the order impugned is fit to be set aside.

Per contra, the learned counsel representing the Vigilance has submitted that for the present purpose, elaborate consideration of the material is non permissible and in likewise manner, reason for framing of the charge like discharge is not at all warranted. Furthermore, it has been submitted that grave suspicious is sufficient to frame charge, without scrutinizing the material in a way that if unrebutted, would lead to conviction.

In terms of Section 227 of the Cr.P.C., the court has to see whether the materials having been collected during course of investigation as well as so available on the record did satisfy that there happens to be deficiency whereupon accused should not be proceeded with, then in that event, the accused is to be discharged. This sufficiency has got an elastic approach by different judicial pronouncement and has gone to the extent of providing grave suspicious irrespective of whether those materials were if unrebutted appear to be sufficient for

attracting conviction. That means to say, the mode of consideration at the stage consideration of framing of charge/discharge is minified to that extent whereunder the Court is to see whether the materials available on records exposes grave suspicion or not.

In order to properly appreciate the principle governing the stage of charge, recently in **Sonu Gupta Vs. Deepak Gupta & Ors. Reported in 2015(2) PLJR 321 (SC)** it has been held:-

“8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong

suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

The order impugned is to be tested in the background of aforesaid principle. From the order impugned, it is evident that the learned lower court had not reasoned its finding, but the facts remain that the learned lower court had opined regarding presence of sufficient material to proceed with the trial against the petitioner and others. In the aforesaid background, one has to see whether reasons are to be assigned while rejecting prayer of discharge.

In 2005 Cr.L.J. page 3538 (F.B.) it has been held that it is not mandate of law to support with reason whenever an order of refusal to discharge is made.

That being so, instant petition lacks merit and is rejected.

(Aditya Kumar Trivedi, J)

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