

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21843 of 2013

Arising Out of PS.Case No. -378 Year- 2009 Thana -BARH District- PATNA

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1. Mahendra Prasad Verma S/O - Parmeshwar Sao R/O/V - Salempur, P.S. - Barh, District - Patna
 2. Tinku Kumar S/O - Mahendra Prasad Verma R/O/V - Salempur, P.S. - Barh, District - Patna
 3. Sandeep Kumar S/O - Santosh Kumar R/O/V - Salempur, P.S. - Barh, District - Patna

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Arun, Advocate
For the Opposite Party/s : Mr. Md.Sufiyan (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 09-03-2016 Heard learned counsel for the petitioners. State is none represent.

Petitioners are aggrieved by an order dated 25.2.2013 passed by Additional Sessions Judge 2nd, Barh, Patna in connection with Sessions Trial No.562 of 2012 whereby and where under prayer made on their behalf under Section 227 of the Cr.P.C. has been rejected.

It has been submitted on behalf of the petitioners that no evidence exist against them. The I.O., during course of investigation did not find any sort of reliable evidence in order to prove connectivity of the petitioners with the alleged crime

whereupon, petitioners were not sent up for trial. However, differing there from petitioners have been put on trial.

It has also been submitted that Ajay, deceased dead body was found in a room occupied by Puja Kumari, a concubine. She had detailed the incidence of suicide committed by the deceased himself whereupon U.D. Case No.20 of 2009 was registered. Inquest report was prepared in presence of brother of deceased who, at that very time, failed to put any sort of allegation against the petitioners but, due to ulterior motive, the aforesaid brother namely Sanjay Chaudhary during course of investigation of aforesaid U.D. Case No.20 of 2009 gave statement implicating the petitioners including others whereupon, after concluding investigation of the U.D. Case, the I.O. himself on his own statement recorded the fardbeyan, basis of instant prosecution. It has also been submitted that neither Puja Kumari nor during course of investigation by the police any kind of incriminating material has been collected against these petitioners and further, finding insufficient material were not sent up. So submitted that there happens to be deficiency of the materials whereupon, even grave suspicion could be alleged. Furthermore, it has also been submitted that the statement of the brother of the deceased should not be taken into consideration in the background of the fact that

they, during course of preparation of inquest report, had not averred against these petitioners. Hence, petitioners are entitled for discharge.

On account of non-presence of learned Additional P.P., nothing more has been brought up on record to controvert.

Whenever a case triable by the court of Sessions comes before the court of Sessions after commitment, after appearance of the accused the public prosecutor has to open its case, as is required under Section 226 of the Cr.P.C. Subsequently thereof, a preliminary stage of the trial is taken up by way of appreciating the materials to trace out (a) whether there happens to be absence of sufficient material to proceed against the accused, ultimately would discharge the accused (b) whether a case is made out (i) exclusively triable by the court of Sessions then will proceed with the trial after framing of charge under proper head (ii) if it finds that no sessions triable offences are visible then in that event will remit the matter to the learned C.J.M. after having charge framed. The first option is available under Section 227 of the Cr.P.C. while the later one under Section 228 of the Cr.P.C.

Because of the fact that petitioners are aggrieved by the order impugned which has been passed at the stage of Section 227 of the Cr.P.C., on account thereof same is taken note of :

“227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

From cursory perusal of the section, its requirement happens to be that of consideration of the record along with document having available therewith as well as after hearing both the parties and further the judge has to come to a conclusion that no sufficient ground subsist to proceed against the accused, then in that event, the accused will be discharged. The crucial question, for the present consideration happens to be identification of sufficient ground. Whether the sufficient ground should be like a conclusive proof as the prosecution is required to substantiate against the accused during trial something, other than that. The aforesaid issue has come up repeatedly for consideration before the Hon’ble Apex Court. Recently, in **Sonu Gupta Vrs. Deepak Gupta** reported in **2015 (2) PLJR 321 (Supreme Court)**, the Hon’ble Apex Court has held as follows :

“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.”

As has been held by the Hon’ble Apex Court in Sonu Gupta case (Supra), grave suspicion is sufficient to justify framing of charge, therefore, the materials having been collected by the prosecution during course of investigation as well as available on the record is to be taken note of. From the order impugned, it is evident that there happens to be consistent statement of the witnesses under para-34, 35 of the case diary wherein petitioners along with others have been identified to have carried the deceased along with them from his house and subsequently thereof, his dead body was found in the room occupied by Puja Kumari. Those materials including the fardbeyan of informant where under he had also referred statement of Sanjay

Chaudhary recorded during course of investigation of U.D. Case No.20 of 2009 is also to that extent. What evidentiary value their statement would be, that happens to be a matter of trial. What repercussion the U.D. case will have, is to be adjudged during course of trial. For the present, it happens to be stage of framing of charge/discharge where under meticulous examination of the impact of the evidence is forbidden.

Accordingly, instant petition is found devoid of merit and is rejected.

(Aditya Kumar Trivedi, J)

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