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IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53863 of 2015

Arising Out of PS.Case No. -10 Year- 2011 Thana -C.B.I CASE District- PATNA

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1. Shri Ram Pravesh Rai, S/o Late Shri Kamla Rai, resident of Gaharua House, Srinagar, P.S.- Siwan, District- Siwan, presently residing at 19 Patliputra Colony, Patna-13.

.... Petitioner/s

Versus

1. The Union of India Through The Central Bureau of Investigation, Through The Superintendent of Police, Anti Corruption Branch, Dr. S.K. Singh Path, Bailey Road, Patna- 800022.
2. The Superintendent of Police, CBI, Anti Corruption Bureau, Patna.
3. The State of Bihar.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Binod Kumar Singh, Adv.
For the Opposite Party/s : Mr. Sanjay Kumar, S.C., C.B.I.
For the State : Mr. Pradeep Narayan Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-03-2016

Heard Mr. Binod Kumar Singh, learned counsel for the petitioner and Mr. Sanjay Kumar, learned counsel appearing for the C.B.I.

2. The petitioner along with fifteen other persons was made accused in connection with Special Case No.07 of 2011 arising out of RC 10A of 2010 dated 11.0-5.2010 registered under Sections 120-B, 406, 408, 409, 420, 467, 468, 471 of the Indian Penal Code and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The said FIR was instituted on the basis of a written complaint dated 03.03.2010 made by one Shri Ghanshyam, the then Branch Manager of the Central Bank of India, Amwara Chowk Branch, Muzaffarpur to the Superintendent of Police, Central Bureau of Investigation, Patna. The written complaint deals about several illegalities and irregularities in operation of OD A/c Nos. 231, 145, 155 and 162 of the Amwara Branch of the Central Bank of India.

4. On completion of investigation, the Police submitted charge-sheet only against ten accused persons including the petitioner, and the Central Bureau of Investigation did not find sufficient evidence as far as the other named accused persons were concerned. Accordingly, they were not sent up for trial.

5. On receipt of the police report, the learned Special Judge, C.B.I., Patna took cognizance of the offence and after supplying the police papers as mandated under Section 207 of the Code of Criminal Procedure (for short ‘CrPC’), the case was fixed for framing of charge.

6. At the stage of framing of charge, an application was filed by the petitioner seeking his discharge from prosecution in connection with the aforesaid case. After hearing the parties, the learned Special Judge, C.B.I., Patna dismissed the aforesaid application for discharge vide order dated 09.10.2015. The aforesaid

order dated 09.10.2015 passed by the learned Special Judge, C.B.I., Patna in Special Case No.07 of 2011 arising out of RC 10A of 2010 is under challenge in the present application preferred under Section 482 of the CrPC.

7. Mr. Binod Kumar Singh, learned counsel for the petitioner has submitted that the material facts having direct bearing on the present case have not been taken into consideration by the Investigating Officer of the case. Therefore, submission of charge-sheet against the petitioner is completely groundless. He has contended that the learned Special Judge while rejecting the discharge petition failed to consider the material fact which goes to the root of jurisdiction to file charge-sheet against the petitioner.

8. Mr. Singh has further contended that the petitioner, as the Managing Director of M/s Ram Pravesh Rai Estate Pvt. Ltd (for short 'the Company'), which is registered under the Companies Act, authorized co-accused Rajesh Kumar Singh only for dealing with the tender matters and signing such documents relating to tenders as representative of the Company. He was never authorized to operate the accounts in question. The petitioner had married his daughter with one Jitesh Kumar Singh on 05.06.2006. Thereafter, co-accused Rajesh Kumar Singh took the petitioner in his confidence with malafide intention, taking advantage of relationship being elder

brother of son-in-law of the petitioner. The said Rajesh Kumar Singh with ill motive influenced the petitioner for opening OD A/C No.155 in the name of the Company under signature of the petitioner only as Managing Director of the Company and subsequently reduced his transactions through Cash Credit Account operating through Dena Bank, Maurya Lok, Patna.

9. Mr. Singh has further contended that the aforesaid Rajesh Kumar Singh had fraudulently withdrawn huge amount without the knowledge of the petitioner by unauthorizedly and fraudulently increasing the limit of the said account from one crore to twenty crore in collusion with the Bank officials and that too without the knowledge and permission of the petitioner. He has contended that the petitioner as the Managing Director of the Company has instituted Money Suit No. 9 of 2010 and Money Suit No. 16 of 2010 in the court of the learned Sub-Judge-I, Muzaffarpur against aforesaid Rajesh Kumar Singh and the State Bank of India. The petitioner has also filed a complaint case against aforesaid Rajesh Kumar Singh for the offences under Sections 405, 406, 420, 421, 221, 452, 467, 468, 471 and 596 of the Indian Penal Code in the court of Chief Judicial Magistrate, Patna, which was subsequently sent to the police for investigation, pursuant to which Patliputra P.S.Case No. 06 of 2010 dated 09.01.2010 was registered under Sections 406, 420, 421, 467,

468 and 471 of the Indian Penal Code.

10. Mr. Singh has contended that the criminal case against Rajesh Kumar Singh was instituted by the petitioner much earlier in time and thereafter the officials of the Bank, in order to save their own skin from criminal prosecution, filed the present case under a deep rooted conspiracy.

11. Lastly, it has been contended by Mr. Singh that the petitioner is not concerned with OD A/C Nos. 145 and 162 and is concerned only with OD A/C Nos.155 and 231, which were opened in the name of the Company.

12. On the basis of the aforesaid submissions, learned counsel for the petitioner has contended that the name of the petitioner in the charge-sheet as accused no.4 is groundless. However, the learned Special Judge failed to consider the material aspect of the case though raised before him but by cryptic consideration the application for discharge was illegally and improperly rejected.

13. Per contra, Mr. Sanjay Kumar, learned counsel for the Central Bureau of Investigation has submitted that there is no illegality in the order dated 09.10.2015 whereby the learned Special Judge has rejected the application for discharge of the petitioner. He has contended that OD A/C No. 155 was opened in the Central Bank of India, Amwara Branch, Muzaffarpur and during the period

September, 2006 to September, 2008 the office-bearers of the Company availed overdraft facility allowed by the co-accused Shiv Shankar Ram in illegal manner as a result of which the Bank had to sustain a loss of Rs.2,33,96,968/-. Similarly, one OD A/C No. 231 was opened in the same Branch and during the period March, 2008 to September, 2008 the office-bearers of the Company withdrew an amount of Rs.10 crore under the cover of overdraft against no security in illegal and improper manner and thereafter a fixed deposit of Rs.10 crore was created by such withdrawal and this was placed under lien as security for the above overdraft limit without taking any margin. The fraudulent act of the office-bearers of the Company had caused a loss of Rs.28,24,495/- to the Bank.

14. Mr. Sanjay Kumar has further contended that the investigation disclosed that the petitioner had entered into a criminal conspiracy with co-accused Rajesh Kumar Singh and other officials of Amwara Chowk Branch of the Central Bank of India, namely, Shiv Shankar Ram, the then Branch Manager, Shiv Shanker Kumar Prasad Singh, the then Clerk, Ram Adhar Thakur, the then Head Cashier, Ranendra Kumar Ojha, Manohar Kumar Sinha and Padma Nand Singh Azad, all the then Regional Managers of Central Bank of India, Regional Office, Muzaffarpur for cheating the Bank fraudulently and dishonestly for their personal gain. He has contended that the accused

persons caused wrongful gain of Rs.11,98,24,936/- for themselves and corresponding wrongful loss to the Central Bank of India. The investigation has further established that overdraft facilities were allowed by co-accused Shiv Shankar Ram in four OD Accounts of Amwara Chowk Branch of the Central Bank of India to be availed in an illegal and improper manner against the existing norms of the Bank, without any proper security or surety of the third party, without proper documentation and even without charging/realizing due interest, commission, which caused wrongful loss to the Bank. Lastly, it has been contended by the learned counsel for the C.B.I. that it is a huge scam in which the petitioner has actively participated and there are sufficient materials to frame charges against the petitioner and put him on trial.

15. I have heard the learned counsel for the petitioner and learned counsel for the C.B.I. and perused the record.

16. Before considering the claim of the parties, it is useful to refer to Sections 227 and 228 of the CrPC, which are as follows :

> **"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."
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> **"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."

17. from perusal of the aforesaid provisions, it would be apparent that the Judge concerned has to consider all the records of the case, the documents placed, hear the submission of the accused and the prosecution and if there is not sufficient ground for proceeding against the accused, he shall discharge the accused by recording reasons. After such consideration and hearing as mentioned in Section 227 CrPC, if the Judge is of the opinion that there is ground for presuming that the accused has committed the offence, he shall frame the charge and explain it to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

18. The scope of Sections 227 and 228 CrPC was considered by the Hon'ble Supreme Court in Sajjan Kumar Vs. CBI [(2010)9

SCC 368] in paragraphs 17 to 21, which are as under :-

> “17. In Prafulla Kumar Samal [(1979)3 SCC 4], the scope of Section 227 of the CrPC was considered. After adverting to various decisions, this Court has enumerated the following principles : (SCC p.9, para 10)
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> "(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
>
> (2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
>
> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
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> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

18. In *Dilawar Balu Kurane Vs. State of Maharashtra*, (2002)2 SCC 135, the principles enunciated in Prafulla Kumar Samal (supra) have been reiterated and it was held: (Dilawar Balu Kurane case, SCC pp. 140-41, paras 12 & 14)

> "12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [see Union of India Vs. Prafulla Kumar Samal,(1979)3 SCC 4].
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> 14. We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that

not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant."

19. It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 & 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following

principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the

alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

19. Keeping the above principles in mind, if I look to the facts of the present case, I find that the investigation has revealed that the petitioner entered into a criminal conspiracy with the officials of Amwara Chowk Branch of the Central Bank of India for cheating the Bank fraudulently and dishonestly for personal gain and in pursuance thereof caused wrongful loss of Rs.11,98,24,936/- to the Bank. The Company had opened its account under the signature of the petitioner and it availed overdraft facility in an illegal and improper manner against the existing norms of the Bank. Such allegations cannot be said to be groundless. Moreover, plausible defence of an accused cannot be taken into consideration at this stage by a trial Judge for discharging an accused from a criminal case. The probative value of the defence evidence can only be decided by the court during trial.

20. Regard being had to the nature of allegation made in the FIR, the materials collected during investigation and the documents

submitted before the court along with the report submitted under Section 173(2) CrPC, if the trial court has come to a finding that it is a fit case for framing charge, I see no illegality in it.

21. In view of the discussions made hereinabove, the application, being devoid of any merit, is, hereby, dismissed.

NOT OFFICIAL

(Ashwani Kumar Singh, J)

Pradeep/-

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