

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34177 of 2016

Arising Out of PS.Case No. -19 Year- 2015 Thana -SC/ST District- JEHANABAD

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1. Dharamveer Kumar @ Avinash Kumar S/o Hardeo Ram
 2. Sheela Devi W/o Dharamveer Kumar @ Avinash Kumar
 3. Laksho Devi W/o Sanjay Ram All Resident of village- Tehta, P.S.-
Makhdumpur, District- Jehanabad

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Sinha

For the Opposite Party/s : Mr. Ram Shankar Das (Spl.Pp)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 18-05-2017

Heard learned counsel for the petitioners

and Mr. J.N. Thakur, learned counsel for the State.

The present application has been filed for quashing of order dated 20.06.2016 passed by learned Additional Sessions Judge-Ist, Jehanabad in Sessions Trial No. 114 of 2016/21 of 2016 arising out of Jehanabad SC/ST P.S. Case No. 19 of 2015, whereby the petitioners' application for discharge under Section 227 of Code of Criminal Procedure (hereinafter called the 'Code') has been rejected.



I.A. No. 1053 of 2017 has been filed for amending the prayer to the extent that the order dated 12.07.2016 passed by learned Additional Sessions Judge-Ist, Jehanabad be also quashed, whereby charges have been framed against the petitioners for offences punishable under Sections 341, 323, 447, 307, 504/34 of the Indian Penal Code and section 3(1)(x) of SC/ST (Prevention of Atrocities) Act.

The prosecution case got initiated on the basis of written report of Bhola Chaudhary submitted to the Officer-in-Charge of Jehanabad SC/ST Police Station alleging therein that when he was arranging bricks for construction of house, petitioner Dharamveer Kumar came and restrained the informant from constructing the house. On protest being made all the accused persons came and assaulted the informant with bricks on his head, leading to registration of Jehanabad SC/ST P.S. Case No. 19 of 2015 under Sections 341, 323, 337, 447, 504/34 of the Indian Penal Code and section 3(1)(x) of SC/ST (Prevention of Atrocities) Act.

On conclusion of investigation the final report (charge sheet) was submitted under Sections 341, 323, 307, 504/34 of the IPC and section 3(1)(x) of SC/ST (Prevention of Atrocities) Act and consequently the process was directed to



be issued after cognizance being taken under the same provisions of the IPC and SC/ST Act.

It is submitted by learned counsel for the petitioners that a petition for discharge under Section 227 of the Code has been filed on behalf of the petitioners on 08.06.2016 on the ground that the accusation has been levelled in the background of litigated land dispute and pending Title Suit No. 71 of 2015. Moreover, for the same incident Makhdumpur P.S. Case No. 132 of 2015 was lodged by the same informant levelling accusation under Sections 341, 323, 307, 504/34 of the Indian Penal Code and section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, wherein, after conclusion of the investigation, the final form was submitted as mistake of fact but the learned CJM vide order dated 02.02.2016 declined to pass any order on the final form, on the ground that for the same incident since Jehanabad SC/ST P.S. Case No. 19 of 2015 has been instituted, therefore, no order of cognizance is being passed and hence, directed for amalgamation with Jehanabad SC/ST P.S. Case No. 19 of 2015. Considering the same and after perusing the record learned Additional Sessions Judge-Ist, Jehanabad rejected the prayer for discharge vide order dated 20.06.2016 which is under impugn in the present proceeding. Subsequently, the charges



have been framed and which has been challenged through I.A. No. 1053 of 2017.

The learned APP submits that finding sufficient material on record the prayer for discharge has been rejected, hence, there is no ground for interference with the order of discharge as well as framing of charge.

Considering the rival submissions of the s, this Court is of the view that at the stage of exercising jurisdiction under Section 227 Cr.P.C. the court has to pass order upon consideration of the record of the case i.e. the police report submitted under Section 173(2) of the Code the documents submitted therewith and after hearing the counsel of the accused and the prosecution. The discharge can only permissible when there is sufficient ground for not proceeding against the accused persons. The reason has to be recorded only when the court decides to discharge the accused. No such reason has to be assigned for rejecting the petition for discharge but the order of rejection of the prayer for discharge must comply the pre-conditions for passing such order as incorporated under Section 227 of the Code, like consideration of the materials on record and hearing the accused and the prosecution which must reflect from the order to suggest that the learned Judge has applied his



judicial mind. On perusal of the impugned order it appears that the learned Judge after considering the materials on record and hearing the counsel of the accused and the prosecution has passed the impugned order.

This Court is deliberately not dealing with the accusations and the supporting materials collected during investigation since it may prejudice the case of the petitioner at the subsequent stage of the trial.

The pre-requisite for exercise of jurisdiction under Section 227 of the Code is examining the materials on record that includes the police report submitted under Section 173(2) Cr.P.C. and the documents attached therewith and after hearing the counsel for the accused and the prosecution, the court can discharge an accused only after coming to a conclusion that there is no sufficient ground for proceeding against the accused. At this stage the court is not required to make roving enquiry and to weigh the evidence for the purposes to see whether the materials on record will ultimately lead to conviction of the accused. It is well settled legal proposition that the charge can even be framed on grave suspicion. In the present case, there is specific accusation against the petitioners and that has been found true on conclusion of the investigation. The



parameters for exercising jurisdiction under Section 227 of the Code has been explained by the Apex Court in the case of UNION OF INDIA Versus PRAFULLA KUMAR SAMAL AND ANOTHER reported in (1979) 3 SCC 4 wherein the Apex Court has laid down the parameters for exercise of jurisdiction under Section 227 Cr.P.C. Paragraph 10 reads as:-

“Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(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.

(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.”

Therefore, perusal of the above parameters, it appears that the charge can be framed even on the basis of grave suspicion.

In view of the discussion made above, this



Court finds no merit in this application. Accordingly, it is disposed of with liberty to the petitioners to raise all the contentions during trial.

DKS/-

(Dinesh Kumar Singh, J)

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