

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10423 of 2017

Arising Out of PS.Case No. -54 Year- 2014 Thana -SC/ST District- MUZAFFARPUR

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1. Rakesh Kumar Thakur,
 2. Mukesh Kumar Thakur, Both are the son of Shri Mahesh Thakur,
Resident of village - Dumari, P.S. Mushari, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Surjee Devi, Resident of village - Budh Nagra, P.S. Mushari, District -
Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nalin Kumar

For the Opposite Party/s : Mr. Dr. Indihar Kumari

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 10-04-2017

Heard learned counsel for the petitioners and

Dr. Indihar Kumari for the State.

The present application has been filed for quashing the order dated 05.12.2016 passed by learned 3rd Additional Sessions Judge, Muzaffarpur in Muzaffarpur (SC/ST) P.S. Case No. 54 of 2014 corresponding to G.R. No. 2137 of 2014 whereby the application for discharge of the petitioners under Section 239 Cr.P.C. has been rejected and direction has been issued for framing of charge under Sections 323, 504/34 of the Indian Penal Code and section 3(1)(x) of SC/ST (Prevention of Atrocities) Act.



The prosecution case is that on 4.5.2014, Surjee Devi submitted a written report before the Officer incharge of Muzaffarpur SC/ST police station alleging that she is under-raiyat of one Santosh Kumar Thakur. On 3.5.2014 at 8 P.M. in the night she was thrashing wheat crop, meanwhile Rakesh Kumar Thakur (petitioner no. 1) and Mukesh Kumar Thakur (petitioner no. 2) made protest claiming the wheat crop of their own land. The informant claimed that she is under-raiyat of Santosh Kumar Thakur but the accused persons abused the informant calling her prostitute, pushed her on the ground and made assault. The petitioner no. 2 abused her by calling Chamain and assaulted her. On hearing the cry of the informant. Local people came and saved her but the accused persons took away ten bags of wheat worth rupees fifteen thousand and ultimately, on the written report of the informant, Muzaffarpur (SC/ST) P.S. Case No. 54 of 2014 was registered under sections 341,323,354,379 and 504/34 of the Indian Penal Code and section 3(1)(x)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

On conclusion of investigation, the police submitted final form (chargesheet) under sections 323,354 and 504/34 IPC and section 3(1)(x)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and consequently,



vide order dated 24.7.2015 the learned ACJM directed for issuance of summons after taking cognizance under sections 323,354 and 504/34 IPC and section 3(1)(x)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

The petitioners filed application under section 239 Cr.P.C. for discharge. The learned 3rd Additional Sessions Judge, Muzaffarpur, after considering the application of the petitioners and the materials on record vide order dated 5.12.2016 rejected the petition for discharge. Hence, the present quashing application.

It is submitted by learned counsel for the petitioners that the accusation has been levelled in the background of land dispute. The informant has been set up by the petitioners' brother Santosh Thakur in the background of share dispute. By the impugned order virtually the learned Additional Sessions Judge has not only rejected the petition of discharge under Section 239 Cr.P.C. (hereinafter called as 'Code') but has virtually framed the charges and thereby simultaneously exercised the jurisdiction under Sectionsn 239 and 240 Cr.P.C. Moreover, till date the police report and other documents have not been supplied to the petitioners.

Learned counsel for the State submits that the



impugned order suggests that learned trial court upon considering the police report and the documents submitted with report after hearing the counsel for the prosecution and accused has not found the charges against the petitioners as groundless.

The present case being a warrant case for the purposes of discharge and framing of charge is governed under Sections 239 and 240 Cr.P.C. It is relevant to quote the provisions.

“239. When accused shall be discharged.-

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.- (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge



against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

A plain reading of the provision of Section 239 Cr.P.C. would show that the court trying the case can discharge an accused only for the reasons to be recorded if it considers the charge against the accused to be groundless.

Section 240 of the Code mandates that upon ‘such’ consideration, examination and hearing the Magistrate is of the opinion that there is ground for presuming that accused has committed an offence triable under Chapter XIX of the Code, which such Magistrate is competent to try and in his opinion, could be adequately punished by him, he shall frame charge in writing.

The word ‘such’ appearing before ‘consideration’, ‘examination’ and ‘hearing’ in section 240 denotes such ‘consideration’, ‘examination’ and ‘hearing’ under section 239 of the Code.

The Magistrate in order to exercise the jurisdiction under Section 239 of the Code is required to consider



the police report and the documents transmitted to the Magistrate along with police report making such examination, if any, of the accused as the Magistrate thinks necessary and giving opportunity of being heard to the prosecution and accused. Thereafter if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused after recording his reasons for so doing.

In the present case the FIR was registered with specific accusation against the petitioners and on conclusion of the investigation final report (charge sheet) was submitted against them, thereafter process was directed to be issued after cognizance being taken and considering the materials on record after hearing the counsels for the prosecution and defence the learned Additional Sessions Judge has rejected the application for discharge of the petitioners finding the charge being not groundless. The purport of impugned order does not suggest that charges have been framed as the last portion of impugned order reads as “अभियुक्तगण दिनांक 22.12.2016 को आरोप गठन हेतु उपस्थित रहें 1” Hence, it cannot be said that learned court below has framed the charges. Moreover, at the stage of framing charge under Section 240 Cr.P.C. no separate hearing is required to be given to the accused. A useful reference may have to the case of Dinesh Tiwari



Vs. State of Uttar Pradesh and Another (2014) 13 SCC 137 the Apex Court held though considering the similar provisions under Sections 227 and 228 of the Code that no separate hearing is required to be given for framing of charge. Paragraph no. 10 of the judgment reads as:-

“From Section 228 it is clear that no separate hearing is required to be given for framing the charge if the accused is not discharged upon consideration of the record of the case and documents and after hearing the submissions under Section 227.”

The legal position of discharge has been summed up in the case of **State of Maharashtra and Others Versus Som Nath Thapa and Others, (1996) 4 SCC 659.** Paragraph no. 32 reads as:-

“The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be



that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

Hence, at the stage of discharge or framing of charge the court is not required to appreciate the evidence as it to determine whether the materials produced are sufficient to convict the accused. A useful reference may have to the case of **State of M.P. Versus Mohanlal Soni, (2000) 6 SCC 338**. Paragraph no. 7 reads as:-

“The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

The Apex Court while considering discharge in case under section 498A IPC in the case of Sheoraj Singh Ahlawat Vs State of UP, (2013) 11 SCC 476 has held that whether



allegations levelled are true or not is a matter which cannot be determined at the stage of framing of charge. Any such determination can take place only at the conclusion of the trial.

So far as the contention of the petitioners that their brother Santosh Thakur has set up the informant in the background of share dispute is concerned, it is a settled law that at the stage of discharge or framing of charge, the court is not supposed to look into the defence of the accused or the materials supplied by the accused at the time of discharge as has been held in the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph nos. 18 and 23 reads as follows:

“18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207 (A) omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting



the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.



“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

From the material on record it appears that the petitioner neither raised the issue of non-compliance of the provisions of section 207 Cr.P.C. before the learned court below nor any such pleading has been made in the present Criminal Misc. Application. Though the petition dated 28.06.2016 for discharge has not been brought on record but the impugned order does not suggest that any such pleading has been made by the petitioner in discharge application also.

Under the provision of Section 209 of the Code the sine qua non for committing a case to the court of sessions is complying the provisions of Section 207 or 208 of the Code. Hence, if the compliance of the provisions of 207 of the Code has not been made then the petitioner is still not precluded to raise the issue before the learned court below.

Hence, in view of the discussion made above,



this Court finds no infirmity in the order impugned. Accordingly,
this application is dismissed.

(Dinesh Kumar Singh, J)

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