

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1057 of 2014

=====

1. Ashok Singh @ Karu @ Ashok Kumar Singh son of Late Jamuna Prasad Singh
resident of village - Rampur Darhi, Police Station - Shambhuganj in the district of Banka.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, SrAdv& Mr. Prabhu
Narayan Sharma, Adv

For the Respondent/s : Mr. Ashok Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 02-03-2017

The petitioner is named accused in Shambhuganj P.S.

Case No. 8 of 1996, which has been registered for the commission of offences punishable under Sections 364, 302, 201 read with Section 120B of the Indian Penal Code. He is aggrieved by an order dated 19.11.2014 passed by learned Additional Sessions Judge-II, Banka in Sessions Trial No. 453 of 2001, which arises out of Shambhuganj P.S. Case No. 8 of 1996, whereby his application for discharge under Section 227 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) has been rejected.

I have heard Mr. Akhileshwar Prasad Singh, learned senior counsel appearing on behalf of the petitioner and learned counsel representing the State of Bihar.



Mr. Singh, learned senior counsel appearing on behalf of the petitioner has submitted that it has come in course of investigation that on the date of occurrence the petitioner was admitted in a Hospital, since he was suffering from Jaundice. According to him, the Investigating Officer had taken statement of the concerned Medical Officer who also has said that the petitioner was admitted in his Clinic from 07.02.1996 to 28.02.1996. The date of occurrence being 13.02.1996, learned senior counsel contends that his implication in the case is completely unjustified. He has submitted that the learned court below failed in its duty to examine as to whether the materials brought on record by the police under section 173(2) of the Code, if allowed to remain unrebutted at the trial, the same would have resulted into his conviction.

Much emphasis has been given by Mr. Singh on petitioner's hospitalization in a private Clinic of a Doctor, where the petitioner was undergoing treatment on the alleged date of occurrence. He contends that it is a plea of fact which has not been found to be false by the police during the course of investigation and therefore, the court below wrongly disallowed the petitioner's application for discharge. He has placed reliance on following Supreme Court decisions:-

(i) AIR 1979 SC 366 (Union of India vs



Prafulla Kumar Samal & Anr),

(ii) 2000(2) SCC 573 (State of M.P. vs. S.B. Johari & Ors)

(iii) 2015(2) PLJR (SC) 34 (Sonu Gupta vs. Deepak Gupta & Ors)

Before I consider the submission advanced by learned senior counsel appearing on behalf of the petitioner, I must take note of the reasons assigned by the court below while refusing the petitioner's application for discharge. Learned senior counsel has not disputed the fact that one of the co-accused in his confessional statement before the police has corroborated involvement of the petitioner in commission of the offence. As has been noted above, the petitioner is named in the FIR. The police upon completion of investigation have submitted chargesheet against him. Learned court below has referred to certain paragraphs of the case diary to record showing that some of the witnesses have supported the case of the prosecution regarding involvement of the petitioner in commission of the offence.

In such background, on the plea that on the alleged date of occurrence, the petitioner was admitted in a private Clinic of a Doctor, cannot be a ground for his discharge under Section 227 of the Code. The statement of the Doctor recorded by the police that on the



date of occurrence, the petitioner was under his treatment and admitted in his Clinic, can be a ground to support his case for *alibi* at appropriate stage. This plea of *alibi* will have to be proved by him at the trial. These facts, in my opinion, cannot be basis for discharge of an accused under Section 227 of the Code.

The Supreme Court decisions on which reliance has been placed by learned senior counsel are of no avail. The said decisions rather answers to the submissions advanced on behalf of the petitioner. In case of **Sonu Gupta** (supra), the Supreme Court laid down in clear terms laid down that 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”. The court further held that even when there are materials for strong suspicion against the accused, the court will be justified in rejecting the prayer for his discharge and in granting liberty to the prosecution to bring on record the entire evidence in accordance with law so that the case of both sides may be considered appropriately on conclusion of trial. The decision in the case of **Sonu Gupta** (supra) is a three judge Bench decision.

Coming to the decision of the Supreme Court in the case of **Prafulla Kumar Samal** (supra) much reliance has been



placed on paragraph no. 10 of the said decision which reads thus:-

"10. 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 Judge cannot act merely as a Post Office or a mouth-piece 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."

The Supreme Court has in categorical terms held in the case of **Prafulla Kumar Samal** (supra) that while exercising power under Section 227 of the Code, the court has the power to sift and weigh evidence for the limited purpose of finding out "whether or not prima facie case against the accused has been made out." It lays down



that if the materials disclose grave suspicion against the accused, the court will be fully justified in framing charge and proceeding with the trial.

Having said thus, in my view, if the court has found, on the basis of materials on record that a *prima facie* case is made out and it is not a case of discharge under Section 227 of the Code, such conclusion arrived at by the court below cannot be said to be erroneous in the background of the facts and circumstances which have been briefly noted hereinabove. The Supreme Court decision in the case of **S.B. Johari (supra)** also does not strengthen the contention made on behalf of the petitioner rather it weakens the plea. In the said decision, in paragraph no. 4, Supreme Court clearly held that if *prima facie* case is made out for proceeding further then a charge has to be framed. The court observed that the charge can be quashed only if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence.

I do not find that the petitioner has been able to make out a case that no *prima facie* case at all is made out against him.

The impugned order does not suffer from any legal infirmity requiring this Court's interference in criminal revisional



jurisdiction. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

