

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.646 of 2014

Arising Out of PS. Case No.-361 Year-2010 Thana- LAKHISARAI District- Lakhisarai

=====

Nitin Kumar Surekha Son of Shankar Kumar Surekha Resident of Mohalla-
Naya Bazar, P.S.- Lakhisarai, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Krishan Gopal, son of Late Sajjan Kumar Sureka, resident of Mohalla
Banjaimehraj Gali, Naya Bazar, Police Station and District Lakhisarai

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Adv.

Mr. Vijay Anand

For the Respondent/s : Mr. ASHOK KUMAR(APP)

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 25-07-2017

Aggrieved by an order, dated 11.07.2014, passed by learned Ad hoc Additional Sessions Judge V, Lakhisarai, in Sessions Trial No. 146 of 2014, whereby the learned Court below has rejected an application under Section 227 Of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’) for his discharge, filed by the petitioner, the present criminal revision application has been filed under Section 397 read with Section 401 of the Code.

2. I have heard learned Senior Counsel for the petitioner and learned Additional Public Prosecutor representing



the State. Though the Opposite Party No. 2 has entered appearance by way of vakalatnama filed by learned Counsel, there is no representation on his behalf.

3. In order to appreciate the grounds taken in the present application and the plea that a case for discharge of the petitioner is made out under Section 227 of the Code, it would be apt to take brief note of the facts, leading to registration of the concerned Lakhisarai (Kabiya) O. P. Police Station Case No. 361 of 2010, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

4. The son of the deceased is the informant. It is alleged in the First Information Report that on the fateful day, i.e. 28.07.2010, when the informant's father was there near the kerosene oil godown, some unidentified persons came and opened fire on him. The deceased was a wholesale dealer in kerosene oil. He was taken to a doctor, but he succumbed to the injuries and was declared dead. The First Information Report was registered against unknown. The Police, in course of investigation, apprehended one Mahesh Sah, who made confessional statement before the police that one Raj Kumar Singh of Khabiya Road had contacted him to kill the deceased, for which the said Raj Kumar Singh had taken an amount of Rs.



2,00,000/- from one Babloo Sharma.

5. The petitioner is the nephew of the deceased, and the first cousin of the informant. Pproperty dispute between the informant's family and the family of the petitioner over partition is apparent from materials available on record.

6. In course of investigation, the informant raised suspicion over the role of this petitioner which he might have played in commission of the offence. Similar suspicion appears to have been raised in course of investigation in the statements of the wife and daughter of the deceased, recorded under Section 161 of the Code before the Police.

7. The Police, upon completion of investigation, submitted charge sheet against accused persons, including this petitioner.

8. The petitioner filed an application under Section 227 of the Code, mainly on the ground that there was absolutely no material collected in course of investigation, on the basis of which, the charge sheet could be filed or the Court could proceed against him and accordingly he sought for his discharge. The said application has been rejected by the impugned order, dated 11.07.2014.

9. Learned Senior Counsel appearing on behalf of



the petitioner has submitted that since there is absolutely no material collected in course of investigation worth evidence, the Court below ought to have discharged the petitioner.

10. Learned Additional Public Prosecutor appearing on behalf of the State, on the other hand, has referred to the statement of the witnesses, recorded under Section 161 of the Code, which are there in paragraphs 11, 12 and 15 of the case diary, to contend that the Court below rightly rejected the petitioner's application for discharge since there were some materials collected in course of investigation for prosecuting the petitioner.

11. I have perused the case diary and other materials on record. I have also examined the grounds taken in this application and I have given my anxious consideration to the submissions advanced on behalf of the parties.

12. The materials, which are there against the petitioner, are (i) further statement of the informant, recorded by the Investigating Officer in paragraph 11 of the case diary, and (ii) statements of wife and daughter of the deceased recorded under Section 161 of the Code which are there in paragraphs 12 and 15 of the case diary. Nothing more than suspicion has been raised by them in their statements, against the petitioner.



13. One of the tests to determine whether there is sufficient ground for proceeding against an accused is to determine the question whether materials on record, if unrebutted, are such on the basis of which conviction can be held to be reasonably possible. The purpose of Section 227 of the Code is to ensure that the Court is satisfied that there is/are some material(s) for proceeding against the accused.

14. The Supreme court, in the case of **Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra (AIR 2008 SC 2991, para 15)**, has reiterated (in paragraph 15) the view taken in its earlier decisions in the cases of **State of Bihar v. Ramesh Singh**, reported in **(1977) 4 SCC 39** and **Union of India v. Prafulla Kumar Samal and Another**, reported in **(1979) 3 SCC 4**, that the broad test which is to be applied is whether the material on record, if unrebutted, would make conviction reasonably possible.

15. Applying aforementioned statement of law to the facts of the present case, I find that the materials collected in course of investigation, as referred to by learned Additional Public prosecutor, appearing on behalf of the State, even if remain unrebutted, the petitioner can not be held guilty of the offence alleged. The materials available on record, in my view,



are not sufficient for the Court below to proceed further. The Court below ought to have allowed the application for discharge under Section 227 of the Code.

16. Situated thus, the impugned order, dated 11.07.2014, passed in Sessions Trial No. 146 of 2014, is set aside. Accordingly, the petitioner stands discharged.

17. This application is allowed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02-08-2017
Transmission Date	02-08-2017

