

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18266 of 2014

Arising Out of PS.Case No. -146 Year- 2008 Thana -CHAPRA CITY District- SARAN

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Dr. Shiv Kumar @ Shiv Kumar Singh, S/o Jagarnath Singh, resident of village Patna Nursing Home, Ekma, P.S. Ekma, District Saran at Chapra.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Advocate.
Mr. Anil Kumar Tiwary, Advocate.
Mr. Akshansh Ankit, Advocate.
For the State : Mr. Sanjay Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 21.07.2013/23.07.2013 passed by the learned Adhoc Additional District and Sessions Judge - IVth, Saran at Chapra, in Sessions Trial No. 147 of 2011 arising out of Chapra Town P.S. Case No. 146 of 2008 by which the learned Sessions Judge has rejected the discharge petition of the petitioner filed under Section 227 of the Cr. P.C.

2. The informant alleged that on the date of occurrence, when the Constable No. 905 namely, Bahauddin Ansari was returning from the court of F.T.C. 1st, along with accused Ranvijay Singh after his production and was going to chapra Sadar



Hazat at about 1:45 p.m. sound of firing was heard. It is further stated that after hearing the sound of firing the informant rushed towards the court of Chief Judicial Magistrate, Chapra, inside the southern verandah of the court, and found the Constable No. 905 namely, Bahauddin Ansari lying in injured condition. It is further alleged that after the occurrence, some culprits on motorcycle arrived there and tried to rescue the prisoner Ranvijay Singh from custody of deceased constable. When the Constable No. 905 namely, Bahauddin Ansari (since deceased) resisted and was not releasing the prisoner Ran Vijay Singh from his custody, then culprits fired on the constable who became injured and ultimately, the said culprits managed to rescue the prisoner from the custody of constable and fled away. The injured constable Bahauddin Ansari was rushed to the Sadar Hospital, Chapra for treatment. During course of treatment, the Doctor declared him dead. Thereafter, on the basis of Fard-beyan of the informant the instant case has been lodged against Ranvijay Singh and three unknown accused persons.

3. Heard learned counsel for the petitioner and learned counsel for the State.

4. The petitioner has submitted that while rejecting the petition under Section 227 Cr. P.C., the court below has not taken into consideration the points argued on his behalf. The learned



Sessions Judge has mentioned in last paragraph of the impugned order that it is not clear that whether the petitioner was present at the time of occurrence or not, but, merely on suspicion, the charge can be framed and accordingly rejected the petition of the petitioner filed under Section 227 Cr. P.C.

5. This Court feels that such observation of the court below is totally illegal and not in consonance with provision of Section 227 Cr. P.C.

6. Section 227 Cr. P.C. clearly lays down 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 no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

7. In the instant case, the petitioner is not named in the First Information Report. The name of this petitioner has come during investigation on the basis of confessional statement of one of co-accused named in the First Information Report namely, Ravish Kumar who stated before the police that he along with Bittu got



treatment in the clinic of this petitioner by his Compounder.

8. The court below has taken into consideration the aforesaid facts in the impugned order but still has observed that charge can be framed merely on suspicion and has dismissed the discharge petition of the petitioner filed under Section 227 Cr. P.C.

9. This Court finds that such view of the court below is not in accordance with law. The framing of charge cannot be done merely on suspicion. The provision as laid down under Section 228 Cr. P.C. clearly provides about the stage and manner in which the charge can be framed in the case.

10. Section 228 (1) Cr. P.C. clearly speaks that 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, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such 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.

11. Therefore, from plain reading of Section 228 Cr. P.C. it appears that there should be at least some ground for presuming that accused has committed such an offence. The charge cannot be framed merely on suspicion as observed by the court below in the impugned order.

12. Section 227 clearly lays down that the accused should be discharged if the Judge considers and there is no sufficient ground of proceeding against the petitioner.

13. Learned counsel for the petitioner has *relied upon a decision* reported in **2002 (2) SCC, page 135 (Dilawar Balu Kurane Vrs. State of Maharashtra)** wherein the Hon'ble Supreme Court has clearly held that 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.

14. Therefore, this Court is of the view that the impugned order dated 21.07.2013/23.07.2013 passed by the court below is illegal and not in accordance with law.

15. Accordingly, the impugned order dated 21.07.2013/23.07.2013 passed by the learned Adhoc Additional District and Sessions Judge - IVth, Saran at Chapra, in Sessions Trial No. 147 of 2011 arising out of Chapra Town P.S. Case No. 146 of 2008 along with the entire criminal proceeding against the petitioner is hereby quashed.

16. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

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