

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.686 of 2016

Arising Out of PS.Case No. -107 Year- 2007 Thana -KAHALGAON. District- BHAGALPUR

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1. Awadesh Kumar Jha Son of Ravi Kant Jha
 2. Ravi Kant Jha Son of Late Uma Kant Jha
 3. Mithilesh Kumar Jha son of Sri Ravi Kant Jha
 4. Neelam Devi W/o Mithlesh Kumar Jha
 5. Juli Devi W/o Anil Pathak

All are resident of Village- Anadipur, P.S.- Kahalgaon, District-
Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Rudra Shakti Mishra S/o Late Shambhu Nath Mishra, resident of
Saraidhela, P.S.- Saraidhela, District- Dhanbad (Jharkhand)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Subhash Kumar Jha

For the Opposite Party/s : Mr. Anil Pd.Singh(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 26-04-2017

Heard learned counsel for the petitioners

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

The petitioners being the husband, parents,
sister and brother's wife of the husband of the victim have
prayed for quashing the order dated 05.10.2015 passed by
learned Additional Sessions Judge-7th, Bhagalpur in Sessions



Trial No. 558 of 2013/Trial No. 380 of 2015 arising out of Kahalgaon P.S. Case No. 107 of 2007, whereby the petitioners' application for discharge under Section 227 Cr.P.C. has been rejected.

The prosecution case as per the fard-beyan of Rudra Shakti Mishra is to the effect that his sister Preeti Mishra (victim) was married to petitioner no. 1 Awadhesh Kumar Jha on 06.06.2006 but after few months of the marriage torture began to be inflicted on her. On 11.03.2007 at 6.00 P.M. the cousin brother of the informant called him and conveyed that the in-laws of the informant's sister have killed her by hanging. Thereafter, the informant along with younger his brother and mother went to the matrimonial house of the victim at Anadipur and found the dead body of his sister on a cot in the courtyard. The informant noticed several assault injuries on the dead body of the deceased leading to registration of Kahalgaon P.S. Case No. 107 of 2007 under Sections 498A and 304B/.34 of the Indian Penal Code.

On conclusion of investigation the final report (charge sheet) was submitted under Sections 302 and 120B of the IPC vide Charge Sheet No. 326 of 2012 and consequently the process was directed to be issued after



cognizance being taken under Sections 302 and 120B of the IPC.

On 05.08.2014 an application for discharge under Section 227 Cr.P.C. was filed before the learned trial court stating therein that the victim committed suicide and the suicide note was send to FSL which was tallied with the specimen handwriting of the victim and it was found that suicide note was in the handwriting of the victim. Hence, even assuming the accusations to be true, at best a case under Section 306 of the IPC would be made out. Moreover, it is claimed that petitioner no. 1 being S.I. in C.R.P.F. was not present on the date of the occurrence. The said discharge application was rejected by learned Additional Sessions Judge-7th, Bhagalpur vide order dated 05.10.2015.

The pre-requisite for exercise of jurisdiction under Section 227 Cr.P.C. 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 that the charge can even be framed on grave suspicion. In this connection, a useful reference may have to 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.

It is well settled view that at the stage



exercising jurisdiction under Section 227 of the Code of Criminal Procedure the court has to consider the question of discharge on the basis of materials available on record by way of police report under Section 173(2) of the Code. The prerequisite under Section 227 of the Code requiring hearing of the accused does not stipulate considering the defence of the accused. A useful reference may be had to the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph no. 23 reads as follows:

“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.”

The impugned order suggests that the learned trial court heard the parties, perused the police report and thereafter came to the conclusion that there are materials to proceed with the trial. Moreover, the impugned order was passed on 05.10.2015 and there is nothing on record to suggest the present stage of the trial. Hence, this Court is not inclined to



interfere.

Accordingly, this application is disposed of with liberty to the petitioners to raise all the contentions during trial.

(Dinesh Kumar Singh, J)

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