

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1221 of 2016

Arising Out of PS.Case No. -70 Year- 2014 Thana -ARWAL District- JEHANABAD

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Md. Ibrar Khan Son of Late Ahmad Khan resident of village- Bhikhanpur
Bhebai, P.S.- Mahendiya in the district of Arwal

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Opposite Party/s : Mr. S.Ehteshamuddin(App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

02/ 26-04-2017

Heard learned counsel for the petitioner and

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

The present application has been filed for quashing the order dated 03.12.2015, passed by learned Chief Judicial Magistrate, Arwal in Trial No. 729 of 2015 arising out of Arwal P.S. Case No. 70 of 2014, whereby petitioner's application for discharge under Section 239 Cr.P.C. (hereinafter called 'Code') has been rejected.

The prosecution case got initiated on a written report of Awadhesh Singh dated 24.3.2015, submitted before the Officer-in-charge, Arwal Police Station alleging therein that on 24.03.2015 at about 3.15 P.M., the students of the Upgraded Middle School, Bhagwan Bigha saw the petitioner, the Headmaster and one teacher, Shiksha Mitra taking away, rice



meant for Mid-day meal, from the school. On enquiry made by the students, both the teachers started assaulting the students. Thereafter, the students called one Awadhesh Singh who was working in the field. On arrival of Awadhesh Singh, both the teachers escaped from the scene along with the rice, after which Awadhesh Singh called the villagers. Thereafter, both the teachers hid themselves in the house of Kameshwar Singh, who is the cook of Mid-day meal. The villagers informed the police, seized the rice, bicycle and got arrested the petitioner, who was the headmaster of the school, while the other teacher escaped from the scene, leading to registration of Arwal P.S. Case No. 70 of 2014 under sections 406,409 and 411 of the Indian Penal Code.

On conclusion of the investigation, the police submitted final report (charge sheet) under Sections 406, 409 and 411 of the Indian Penal Code and consequently, process was directed to be issued after cognizance being taken under the aforesaid provisions.

The petitioner filed an application on 19.1.2015 with a prayer for discharge under section 239 of the Code and the said application of discharge has been rejected by the impugned order dated 3.12.2015, by the learned Chief Judicial Magistrate, Arwal which is under challenge in the present



proceeding.

It is submitted by learned counsel for the petitioner that at an earlier point of time, Arwal P.S. Case No. 26 of 2014 was registered, at the behest of the petitioner under Sections 461, 379 and 411 of the Indian Penal Code for the theft of rice of Mid-day meal from the school, against Jairam Singh and his son Sonu Kumar from whom the stolen rice was recovered, hence, the said Jairam Singh set up the informant, Awadhesh Singh, who is none else than cousin brother of Jairam Singh, got the case registered with frivolous accusation. The petitioner is said to be working as a teacher since 1976. It is submitted that no case is made out against the petitioner.

Learned APP appearing for the State submits that the FIR was lodged with specific accusations. The petitioner and co-accused teachers of the school were caught red handed. On conclusion of investigation the petitioner and others were chargesheeted. It is further submitted that an accused can claim discharge under section 239 of the Code only if the charges are found to be groundless.

Having heard learned counsel for the parties, it is relevant to quote section 239 of the Code which reads as follows:

“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.”

From perusal of the above provision, it appears that for considering the discharge of accused, Magistrate has to consider the police report, documents sent with it under section 173 of the Code and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving prosecution and the accused an opportunity of being heard if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused by recording reasons for doing so.

Hence, the above provision mandates for recording reasons only in case of discharge and not when the application for discharge is being rejected. However, this does not mean that the Magistrate will not consider the police report or not give an opportunity of hearing to the prosecution and the defence. A useful reference may have to the case of Kanti Bhadra Shah and



Anr. Vs. State of W.B. (2000) 1 Supreme Court Cases 303.

Paragraph nos. 10 and 11 read as follows:

“10. It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.

11. Even in cases instituted otherwise than on police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per first sub-section of Section 245, if a magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context it is pertinent to point out that even in a trial before a court of session, the judge is required to record reasons only if he decides to discharge the accused. (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.”



The Apex Court in the case of State of Maharashtra and Ors. Vs. Som Nath Thapa and Ors. (1996) 4 Supreme Court Cases 659 held that if on the basis of materials on record, a Court comes to a conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. Paragraph nos. 30 to 32 read as follows:

“30. In Antulay's case, Bhagwati, CJ., opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence".

31. Let us note the meaning of the word "presume". In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted



in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition.

32. 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 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."

The Apex Court in the case of Soma Chakravarty Vs. State through CBI reported in (2007) 5 Supreme Court Cases 403 held that if on the basis of material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charges. Paragraph 10 reads as follows:

"It may be mentioned that the settled legal position, as mentioned in the above decisions,



is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.”

Applying the above discussed propositions, to the present case, this Court finds that the petitioner has been named with specific accusation in the FIR and on conclusion of investigation, he was chargesheeted and the learned Magistrate, after going through the police report, found material against him to proceed. Hence, it cannot be said that the charges against the petitioner are groundless.

So far as the contention of learned counsel for the petitioner, that a case of theft of Mid-day meal was lodged against some persons, who set up the present informant to lodge



the present case, is concerned, it is a settled view that the defence of the accused cannot be looked into at the stage 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 read 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.”



The issue whether at the stage of exercise of jurisdiction under section 227 of the Code the Court can look into the defence material was further examined in the case of Rukmini Narvekar Vs. Vijaya Satardekar & Ors. (2008) 14 Supreme Court Cases 1, where Justice Katju while reiterating the view laid in Debendra Nath Padhi (supra) had observed that in exceptional and rare cases the Court can look into the material produced by the defence at the time of framing of charge provided such material convincingly demonstrate that the prosecution version is totally absurd or totally concocted. Paragraph 22 records the lead view of Justice Markendey Katju (as his lordship then was) which reads as follows:

“22. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though



this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.”

However, Justice Altamas Kabir, as his Lordship then was, while writing concurrent judgment has held that at the stage of Section 227 of the Code, the trial Court cannot consider the material produced by the defence, however, such material can be considered in exercise of power under section 482 of the Code. Paragraph Nos. 37 and 38 read as follows:

“ 37. The larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. Incidentally, the very same arguments which have been advanced by Mr. Lalit before us on behalf of the accused, were also advanced by learned Counsel before the larger Bench and the same were negated as far as Section 227 Cr.P.C. is concerned. However, in paragraphs 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 Cr.P.C. and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

38. In my view, therefore, there is no scope for the accused to produce any evidence in support of the



submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C., the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred.”

In view of the discussions made above, this Court finds no infirmity in the impugned order. Hence, this application is dismissed.

(Dinesh Kumar Singh, J)

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