

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21961 of 2014

Arising Out of PS.Case No. -311 Year- 2013 Thana -SIWAN CITY District- SIWAN

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Jainuddin Ahmad S/o Nasruddin Ahmad R/V - Bidutihata, P.S. - Muffasil,
District - Siwan

.... Petitioner

Versus

1. The State of Bihar
2. Shilpkunj @ Vikki S/o Lal Babu Chaudhary R/V - Kagji Muhalla, P.S. - Dindayal Nagar, District - Siwan
3. Said Ali S/o Ekramul Khan R/V - Tadwa, P.S. - Muffasil, District - Siwan
4. Saddam @ Sonu @ Monu S/o Dilawar Khan R/V - Tadwa, P.S. - Muffasil, Dist. - Siwan
5. Babloo Soni S/o Dwarika Prasad R/V Kagji Mohallah, P.S. - Dindayal Nagar, District - Siwan
6. Umesh Kumhar, S/o Kanhaiya Kumhar R/V - Kagji Mohallah, P.S. - Dindayal Nagar, District - Siwan
7. Sudhir Jaiswal s/o Chandra Prakash Jaiswal R/V - Kagji Mohallah, P.S. - Dindayal Nagar, District - Siwan
8. Rajan Turha S/o Late Thakur Turha R/V - Kagji Mohallah, P.S. - Dindayal Nagar, District - Siwan
9. Anil Turha S/o Sudama Sah R/V - Kagji Mohallah, P.S. - Dindayal Nagar, District - Siwan

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ajay Mishra
For the Opposite Party/s : Mr. Kanhaiya Pd.Singh, Sr. Adv.
Mr. Ranjan Kumar Dubey, Adv.
Mr. Arbind Kumar, Adv.
Mr. Bijay Prakash Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 10-01-2017 Heard Sri Ajay Mishra, learned counsel for the

petitioner, Sri Kanhaiya Prasad Singh, learned Senior Counsel,

assisted by Sri Ranjan Kumar Dubey, learned counsel for

Opp.Party nos.2, 5 to 9, Sri Arbind Kumar, learned counsel for

Opp.Party no.3 as well as Sri Bijay Prakash Singh, learned counsel



for Opp.Party no.4.

2. The petitioner, who is the informant in Siwan Town P.S. Case No.311/13, corresponding to Sessions Trial No.123/14, has approached this Court, invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure with a prayer to quash an order dated 30.04.2014 passed by learned F.T.C.III, Siwan (hereinafter referred to as the “Trial Judge”). By the said order, the learned trial judge in view of power conferred under Section 227 of the Code of Criminal Procedure has discharged Opp.Party nos.2 to 9 from the case.

3. Short fact of the case is that on the basis of fardbeyan of the informant/petitioner, an F.I.R. was lodged vide Siwan Town P.S. Case No.311/13 for the offence under Sections 302/34 /120(B) of the Indian Penal Code against four named accused persons. The informant had alleged that in a deep routed conspiracy, his elder brother was done to death. After registering the F.I.R. the case was investigated. During investigation, besides F.I.R. named accused persons, name of other ten accused persons also transpired. It was noticed that in a deep routed conspiracy, all accused persons had taken steps for killing the brother of the informant. Thereafter, first chargesheet was submitted vide Chargesheet no.520/13 dated 31.10.2013 against 12 accused



persons. The investigation in respect of one of the F.I.R. named accused as well as one non-F.I.R. accused person was kept pending. Subsequently, after completion of process under Section 207 of the Code of Criminal Procedure, the case was committed to the court of Sessions. At the time of charge, as evident from the impugned order, a petition for discharge under Section 227 of the Code of Criminal Procedure was filed on behalf of accused (i) Shilpkunj @ Vikki, (ii) Babloo Soni (iii) Umesh Kumar (iv) Abhishek @ Chhotu and (v) Rahul Kumar. The learned trial judge after hearing the parties and referring to certain paragraphs of the case diary concluded that there was specific accusation against only four accused persons and remaining accused persons were discharged in absence of any cogent evidence. The said order has been assailed in the present proceeding.

4. Sri Ajay Mishra, learned counsel for the petitioner, while pressing the present petition, has argued that the learned trial judge has committed serious error in passing the impugned order. He submits that the learned trial judge has completely forgotten the scope of trial Judge under Section 227 of the Code of Criminal Procedure. He has emphatically argued that at the time of charge, as settled, only requirement is to examine as to whether prima facie case was made out or not. By way of



referring to certain paragraphs of the case diary, which was earlier summoned and was kept on record, he submits that besides accusation in the F.I.R., in the case diary there was sufficient material to establish that in a deep routed conspiracy, the brother of the informant was done to death. He submits that F.I.R. itself categorically indicates that the brother of the informant was brutally assaulted. He submits that it is true that in the case diary, there is confessional statement of two accused persons, which categorically describes participation of the accused persons. He submits that it is not only confessional statements of the accused before the police, but other corroborative evidences were brought on record. By way of referring to paragraph nos.41, 44, 45 and other paragraphs of the case diary, he submits that confession though made before the police may not be admissible but the same has been corroborated by subsequent statement of the witnesses. It has been argued that on the basis of aforesaid materials, at least there was prima facie case against all the accused persons and it was not a case for discharge. However, the learned trial judge committed serious error and without appreciating the scope of Section 227 of the Code of Criminal Procedure, the learned trial judge passed order of discharge. According to learned counsel for the petitioner, the impugned order is liable to be set aside.



5. On the contrary, Sri Kanhaiya Prasad Singh, learned Senior Counsel appearing on behalf of some of the Opp.Parties as well as Sri Arbind Kumar and Sri Bijay Prakash Singh, both learned counsels appearing on behalf of remaining Opp.Parties have vehemently opposed the prayer of the petitioner. It was submitted by Sri Singh, learned Senior Counsel that confession of one accused before the police has got no evidentiary value. He, by way of referring to paragraph-27 of the case diary, has argued that accused Shilpkunj @ Vikki has made confessional statement before the police and in that confession, it was shown that all accused persons had conspired in the occurrence. According to learned Senior Counsel, the confessional statement of the accused made before the police is not at all required to be looked into. He submits that if the confessional statement of the co-accused is excluded, from the entire case diary, there is no material to connect the private Opp.Parties and, as such, the learned trial judge after examining the case diary has rightly discharged the accused persons. Of course, in respect of some of the accused persons, against whom there was specific accusation of assault, their prayer for discharge was rejected.

6. Besides hearing learned counsel for the parties, I have also perused the materials on record. On perusal of the F.I.R.,



it is evident that there were four accused persons named in the F.I.R.. The content of the F.I.R. indicates that in a deep routed conspiracy, the brother of the informant, who was done to death, was carried from his house on a motorcycle. Thereafter at a particular place, he was done to death. In the case diary, there is material that number of witnesses have claimed to be eye witness to the occurrence and they have disclosed names of other accused persons. Of course, they have indicated that they had heard about the participation of the accused persons.

7. The Court is of the opinion that at the time of charge, as settled, there is only requirement to examine as to whether prima facie case is made out or not. The word “prima facie” in context of exercising power either under Sections 227 , 239, 245 of the Code of Criminal Procedure has elaborately been dealt with by the Hon’ble Apex Court in a case reported in 1996 Cr.L.J.(3) 2448; State of Maharashtra Vs. Som Nath Thapa. This Court may not explain better than the explanation of Hon’ble Apex Court in paragraphs 30,31,32, which is quoted herein below:

“30. In Antulay’s case, (AIR 1986 SC 2045), Bhagwati , C.J., 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.”

8. For examination of the aforesaid observation of the Hon’ble Apex Court, it is established that even in a case, where material collected during investigation creates situation for drawing an inference regarding complicity by accused, the said material would be treated as prima facie case, which would be sufficient for framing of charge. Since in the case diary of the present case, there is specific material showing prima facie case, the court is of the opinion that the learned trial judge was not justified to discharge the accused persons. Only by way of referring to certain paragraphs of the case diary, this Court is of the considered opinion that the learned trial judge has exceeded its jurisdiction as conferred under Section 227 of the Code of Criminal Procedure.

9. In view of facts and circumstances, particularly



nature of accusation, the order impugned dated 30.04.2014 passed by learned F.T.C.III, Siwan in Sessions Trial No.123/14 is hereby set aside and the matter is remitted back to the court below to pass appropriate order in accordance with law.

10. The petition stands allowed.

(Rakesh Kumar, J)

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