IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29474 of 2016

Arising Out of PS.Case No. -249 Year- 2010 Thana -SHASTRINAGAR District- PATNA

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1. Tarique Anwar S/o Md. Anwar Hussain
2. Md. Anwar Hussain S/o Late Zahoor Khan
3. Raushan Ara @ Roshan Ara W/o Md. Anwar Hussain

   All are R/o Zahoor-e-Rahmat Manzil, Samanpura, Raja Bazar, P.S- Shastri Nagar, District- Patna
4. Hena Parwez Khan @ Heena W/o Parwez Ahmad Khan R/o G-3/501, Moraj Residency, Palm Beach Road, P.S- Sanpada, Navi Mumbai

.... Petitioners

Versus

1. The State of Bihar
2. Sanobar Raza, D/o Dr. Asif Raza, R/o P.C. Colony, Kankarbagh, House No. G-126, P.S- Kankarbagh, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar, Advocate

For the Opposite Party/s : Smt. Veena Rani Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

3 18-04-2017 Heard learned counsel for the petitioners and the State.

The present application has been filed for quashing of the order dated 02.03.2016, passed by the learned Additional District and Sessions Judge-IV, Patna, in Trial No.722 of 2014, arising out of Shastri Nagar P.S. Case No.249 of 2010, whereby the petitioners' application for discharge under Section 227 of the Code of Criminal Procedure has been rejected.

The petitioner no.1 is the husband of O.P. No. 2, whereas petitioner nos. 2,3 and 4 are the parents-in-law and sister-in-law of the opposite party no.2.

The prosecution case got initiated on the written report of the informant O.P. No. 2, Sanobar Raza alias Sana, which is to the effect that the informant got married with petitioner no. 1, Tarique Anwar, on 27.4.2007. After the marriage, the informant went to the matrimonial house at Patna and subsequently, went to Mumbai to live with her husband and elder sister of the husband. Subsequently, a further demand of dowry of a Honda City car and a flat was made. The informant O.P. No. 2 tried to pacify the matter but the accused persons were adamant for the fulfillment of further dowry demand. However, the informant spent three years with in-laws but on 25.4.2010 in the morning the petitioner nos. 1 and 3 abused the parents of the informant and thereafter, petitioner no. 3 having full knowledge that the informant is in advanced stage of pregnancy, pushed her, as a result the O.P. No. 2 suffered abdominal pain and she was hospitalized, where ultimately the pregnancy got terminated. It is further alleged that on 14.6.2010 the petitioner nos. 1 and 4 physically assaulted the informant and on 17.6.2010 the O.P. No. 2 came to Patna and narrated the incident to her parents-in-law but they also started pressing for fulfillment of further dowry demand. On 26.6.2010 at night, petitioner nos. 1 and 3 assaulted the informant and asked her to leave the house. Thereafter, the informant called her father and went to her parents' house. On the basis of the aforementioned accusation, Shashtri Nagar P.S. Case No. 249 of 2010 was registered on 6.7.2010, under sections 498A and 316/34 of the IPC and section 4 of Dowry Prohibition Act and consequently, the learned Magistrate took cognizance of the offence against the accused persons.

On 23.5.2015, the petitioners filed an application under section 227 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') for discharge. The learned trial court heard the counsel for the petitioners on discharge petition on 11.6.2015 and issued notice to the informant, fixing further date of hearing on 13.7.2015, but the process server reported that the informant is not available at her house. Hence, considering the materials on record, the learned Additional District and Sessions Judge – 4, Patna, vide order dated 2.3.2016, passed in S.T. No. 722 of 2014, rejected the petition of the petitioners on the ground that though the compromise petition was filed but no order was passed and in the meantime the Final Form (chargesheet) was submitted and after perusal of the FIR and the case diary, the order taking cognizance was passed. The materials on record suggest prima facie case under sections 498A and 316/34 IPC and section 4 of the Dowry Prohibition Act.

Learned counsel for the petitioners submits that at the time of hearing of anticipatory bail application of petitioner no. 1, bearing Cr. Misc. No. 4531 of 2011, the issue was resolved between the parties and both sides agreed to file application for withdrawal of the cases filed against each other before the learned court below and petitioner no. 1 was granted anticipatory bail on the basis of issue being reconciled through the process of arbitration. The anticipatory bail application was disposed of on 12.3.2012. The said order was further modified vide order dated 17.7.2013, passed in Cr. Misc. No. 48412 of 2012, whereby both sides agreed to appear before the learned court below on 12.8.2013.

It is submitted by learned counsel for the petitioner that in spite of the issue being resolved between the parties and a compromise petition being filed before the learned court below, the informant, O.P. No. 2, deliberately chose not to appear before the learned court below, as a result the case could not be disposed of.

Learned counsel for the State submits that charge sheet was submitted under sections 498A and 316/34 of the IPC and section 4 of the Dowry Prohibition Act, which is non-compoundable offence. Moreover, the informant did not appear in the court to support the compromise.

In view of the nature of order this court proposes to pass, this court feels no necessity of notices being issued to O.P. No. 2.

Having considered the rival submissions of the parties, it is relevant to refer to the relevant provisions under Chapter XVIII of the Code, which deals with the trial before the court of Sessions. Section 226 of the Code stipulates the opening of the case of prosecution when the accused appears or is brought before the court in pursuance of commitment of the case, when the prosecutor shall describe the charge brought against the accused by stating the evidence on which he proposes to prove the case. Sections 227 and 228 of the Code deal with the discharge and framing of charge which read as follows:

> "Section 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 not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

From perusal of the aforementioned provisions, it appears that under the provision of section 227 of the Code, the Court has to consider the records of the case, documents submitted along with the police report under section 173(2) and after hearing the submissions of the prosecution and the accused if the court considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record the reasons for doing so. The scope of sufficient ground has been considered by the Apex Court in several judgments and it was found that sufficient ground means prima facie case, as has been held in the case of Chandra Deo Singh Vs. Prokash Chandra Bose alias Chabi Bose and Anr., AIR 1963 Supreme Court 1430, where the Apex Court held with reference to the similar provision contained in sections 203 and 204 of the Code of Criminal Procedure, 1898, that sufficient ground means the prima facie case. Similar is the view of Apex Court in the case of Nirmaljit Singh Hoon Vs. The State of West Bengal and Anr. (1973) 3 Supreme Court Cases 753. Paragraph 22 reads as follows:

"22. Under Section 190 of the CrPC, a magistrate can take cognizance of an offence, either on receiving a complaint or on a police report or on information otherwise received. Where a complaint is presented before him, he can Under Section 200 take cognizance of the offence made out therein and has then to examine the complainant and his witnesses. The object of such examination is to ascertain whether there is a prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not sufficient ground for proceeding. Under Section 202, a magistrate, on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct an inquiry to be made by a magistrate subordinate to him or by a police officer for ascertaining its truth or falsehood. Under Section 203, he may dismiss the complaint; if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, Under Section 202, there is in his judgment "no sufficient ground for proceeding". The words 'sufficient ground' used also in Section 209 have been construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. [see R. G. Ruia v. Bombay. In Vadilal Panchal v. Ghadigaonkar this Court considered the scheme of sections 200 to 203 and held that the inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process. The section does not say that a regular trial of adjudging the truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. In Chandra Deo Singh v. Prokash Chandra Bose where dismissal of a complaint by the Magistrate at the stage of Section 202 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p. 653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by

> the appropriate forum at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. In a re-vision against such a refusal, the High Court also has to apply the same test. The question, therefore, is whether while applying this test the Chief Presidency Magistrate was right in refusing process and the High Court in revision could confirm such a refusal."

The Apex Court in the case of State of Bihar Vs. Ramesh Singh (1977) 4 Supreme Court Cases 39 has held that mere suspicion cannot take the place of proof and hence the charges can only be framed when only grave suspicion is there on record. Paragraph 4 reads as follows:

> "4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under

Section 227 or Section 228 of the Code. If "the Judge consider that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-......(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxta position, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and Judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if. on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

In yet another case, while considering the scope of section 227 and 228 of the Code in the case of Sajjan Kumar Vs. Central Bureau of Investigation (2010) 9 Supreme Court Cases 368, the Apex Court laid down certain parameters for exercise of such jurisdictions. Paragraph 21 reads as follows:

"21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the 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.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial

> Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

The scope of sections 227 and 228 of the Code has also been considered in the case of R.S. Mishra Vs. State of Orissa (2011) 2 Supreme Court Cases 689. Paragraph 21 reads as follows:

> "21. As seen from Section 227 above, while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "If after such consideration". Thus, these words in Section 228 refer to the `consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are

expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed `after such consideration' and therefore, that consideration must be reflected in the order."

No doubt, the Apex Court in the case of Gian Singh Vs. State of Punjab and another, (2012) 10 Supreme Court Cases 303 held that non-compoundable offence can be quashed in exercise of inherent jurisdiction under section 482 of the Code which are non-compoundable under Section 320 of the Code where the offence is not heinous or serious offences of mental depravity or offences like murder, rape, dacoity, etc. Paragraph 61 reads as follows:

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court.

In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the

> parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

The same view has been reiterated by the Apex Court in the case of Narinder Singh and Ors. Vs. State of Punjab and Anr. (2014) 6 Supreme Court Cases 466 and in the case of State of Madhya Pradesh Vs. Deepak and Ors. (2014) 10 Supreme Court

Cases 285 but in the present case, cognizance has also been taken under section 316/34 IPC which is not covered by the ratio laid down in Gian Singh (supra).

It is the admitted case of the petitioners that the informant chose not to support the compromise before the learned court below. More over, the learned court below ought not to have considered the compromise or any material supplied by the defence at the stage of section 227 of the Code as has been held by the Apex Court in the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph nos. 18 and 23 reads 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 same view has been taken by the Apex Court in the case of Rukmini Narvekar Vs. Vijaya Satardekar & Ors. (2008) 14 Supreme Court Cases 1. 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."

Moreover, it has been very fairly submitted by learned counsel for the petitioners that charges have already been framed. The order framing charge has not been challenged and the Apex Court in the case of Amit Kapoor Vs. Ramesh Chander & Anr. (2012) 9 Supreme Court Cases 460, has laid down the parameters for exercise of power under section 482 of the Code for quashing the order passed under section 227 of the Code, refusing to discharge or for quashing the order passed under section 228 of the Code, framing charge, where it has been held that power for quashing criminal proceeding, particularly, on charge framed in terms of section 228 should be exercised very sparingly with circumspection and that too in rarest of the rare cases.

In view of the discussions made above, this Court finds no merit in the application. It is accordingly dismissed. However, any observation made in this order may not prejudice the case of either party at the trial.

(Dinesh Kumar Singh, J)

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