

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29956 of 2016

Arising Out of PS.Case No. -152 Year- 2015 Thana -BHABHUA District- BHABHUA (KAIMUR)

- =====
1. Chhotu Mallah, Son of Bholu Mallah null
 2. Umesh Mallah Son of Late Algu Mallah
 3. Sanjay Mallah Son of Umesh Mallah All resident of Village- Bhabhua, Ward No 25 Police Station- Bhabhua, District- Kaimur, (Bhabhua)

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sushant Kumar

For the Opposite Party/s : Mr. Sri S. Ehteshamuddin

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 17-05-2017

Heard learned counsel for the petitioners

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

The present application has been filed for quashing of order dated 17.06.2016 passed by learned Additional District & Sessions Judge-VIth, Kaimur at Bhabua in Sessions Trial No. 207 of 2015 arising out of Bhabua P.S. Case No. 152 of 2015, whereby the petitioners' application for discharge under Section 227 Cr.P.C. has been rejected.

The prosecution case got initiated on the basis of fard-beyan of Shakuntala Devi recorded by S.I. Mukesh Kumar of Bhabua Police Station on 03.04.2015 at 1.30 P.M. to the effect that on 03.04.2015 when the informant came home from agricultural field, her husband asked for meal and after



taking meal the husband of the informant was taking rest and the informant went to sleep with her two daughters, in the meantime, at 12.30 P.M. the accused persons including the petitioners entered into the house of the informant variously armed and started assaulting the husband of the informant. On alarm being raised the informant went to rescue her husband, in the meantime, co-accused Dhananjay Mallah assaulted the husband of the informant with axe on the head as a result after receiving cut injury he fell down on the ground, thereafter all the accused persons assaulted the husband of the informant with lathi and danda. The informant took her husband to Sadar Hospital, Bhabua but he succumbed to the injuries during treatment leading to registration of Bhabua P.S. Case No. 152 of 2015 under Sections 302/34 of the Indian Penal Code.

On conclusion of investigation the final form (charge sheet) was submitted under Sections 302/34 of the IPC vide Charge Sheet No. 151 of 2015 and consequently the process was directed to be issued after cognizance being taken under Sections 302/34 of the IPC.

The petitioners filed petition for discharge under Section 227 of the Cr.P.C. on 03.09.2015 on the ground that the specific accusation of assault is against Dhananjay



Mallah and petitioners were only alleged to have entered with Dhananjay in the house of the informant. The accusation of assault is omnibus and general against the petitioners and others. The post-mortem report reflects only one injury which is alleged against Dhananjay.

The learned Additional Sessions Judge-VIth, Kaimur at Bhabua vide order dated 17.06.2016 rejected the discharge petition on the ground that there are materials in the case diary suggesting the participation of the petitioners in the commission of the offence. Hence, prima facie the case is made out against the petitioners. The said order is impugned in the present proceeding.

Learned counsel for the petitioners submits that the specific accusation is against co-accused Dhananjay Mallah and the injury caused by this accused only gets corroborated with the post-mortem report.

The pre-requisite for exercise of jurisdiction under Section 227 Cr.P.C. is considering the materials on record i.e. 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, thereafter if the court comes to a conclusion that there is no sufficient ground for proceeding



against the accused, he can discharge the accused after assigning reason for so doing. 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 legal proposition that the charge can even be framed on grave suspicion. In the present case, there is specific accusation that all accused persons including the petitioners entered into the house and made assault, though, there is specific accusation of assault against co-accused Dhananjay Mallah. So far corroboration of the accusation with the post-mortem report is concerned, the same has to be decided during trial. At the stage of exercising jurisdiction under Section 227 Cr.P.C., the court is not supposed to hold mini trial. The court has only to see that there is sufficient ground to proceed with the trial. Hence, ultimately this Court has to decide the question of the charge on the principle of prima facie case being made out against the accused or not. 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, on perusal of the above parameters, it appears that the charge can be framed even on the basis of grave suspicion whereas in the present case there is accusation of assault against the petitioners and others.

In view of the discussion made above, this Court finds no merit in this application. Accordingly, it is disposed of with liberty to the petitioners to raise all the contentions during trial.

(Dinesh Kumar Singh, J)

DKS/-

U		T	
---	--	---	--

