

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26441 of 2012

Arising Out of PS.Case No. -175 Year- 2003 Thana -null District- NALANDA (BIHARSHARIFF)

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1. Bijay Kumar Yadav S/O Kapildeo Yadav Resident Of Village- Deepnagar, P.S.-
Deepnagar, District- Nalanda

2. Pappu Paswan @ Pappu Kumar S/O Late Lakhan Paswan Resident Of Village-
Deepnagar, P.S.- Deepnagar, District- Nalanda

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Rajendra Prasad, Sr.Advocate.

For the Opposite PartyNo.2 : Mr. Balmukund Prasad, Advocate.

For the State : Mr.Jharkhandi Upadhya

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 25-04-2017

Heard the learned counsel for the parties.

2. This petition has been filed for quashing by the petitioners against the order dated 19.05.2012 passed by the 2nd Additional Sessions Judge, Nalanda, Bihar Sharif, in S.T. No.1020 of 2006 whereby the discharge petition was rejected.

3. The petitioners had earlier challenged the order taking cognizance dated 24.01.04 for the offence under Section 364A/34 of I.P.C.which was disposed of by order



dated 24.11.2005 passed in Cr.Misc. No.33732 of 2004 with observation that the points raised by the petitioners be raised at the time of framing of the charge and the court below will consider and dispose of the same by a reasoned order. With such observation the said petition was disposed of. In view of the said observation petitioners moved petition dated 31.05.2010 for discharge before the Sessions court and the same was disposed of by the impugned order dated 19.05.2012 whereby the prayer was refused stating that though Investigating Officer submitted charge sheet against other accused persons but did not sent up these petitioners, however, at para 78 of the case diary suspicion is raised against petitioners.

He further submits that even if the so called evidence mentioned in para 78 of the case diary is fully accepted before it is challenged in cross-examination or rebutted by the defence evidence cannot show that petitioners have committed the offence. So, there is no sufficient ground to proceed in the trial against petitioners. The learned counsel



submits that the aforesaid principle is laid down by the Appex Court in the case of State of Bihar vs. Ramesh Singh, reported in A.I.R 1977SC 2018.

4. Learned counsel appearing on behalf of the petitioners submits that the informant lodged a case under Section 364A and 34 of the Indian Penal Code against unknown person by lodging Bihar Sharif P.S. Case No.175/03. With registration of the F.I.R. police started investigation and on its completion submitted charge sheet only against two accused Ravindra Mahto and Bhokal Yadav and kept the investigation pending against rest of the accused persons but these petitioners were not sent up for trial as there was no evidence against them. It is further submitted that during the entire investigation there is no evidence against the petitioners showing their involvement in kidnapping of the informant's son or receiving ransom amount. At the time of giving ransom the informant and his brother identified miscreants present there but according to his statement these two petitioners were neither said to be



present there nor identified by informant or any one, if merely a bald statement is given by the informant as recorded in paragraph 78 of the case diary only naming these petitioners suspecting their involvement but without any basis of any evidence. Except petitioners' name mentioned in para 78 of the case diary there is nothing against them.

He further submits that even if the so called evidence mentioned in para 78 of the case diary is fully accepted before it is challenged in cross-examination or rebutted by the defence evidence cannot show that petitioners have committed the offence. So, there is no sufficient ground to proceed in the trial against petitioners. The learned counsel submits that the aforesaid principle is laid down by the Appex Court in the case of State of Bihar vs. Ramesh Singh, reported in A.I.R 1977SC 2018.

5. Learned counsel appearing on behalf of the O.P.No.2 submits that charge can be framed on ground of strong suspicion but concedes that there is no other evidence except as mentioned in paragraph 78 of the case diary.



6. Mr.Jharkhandi Upadhyay, Additional Public Prosecutor, submits that there is no illegality in the impugned order but also concedes that except suspicion in paragraph no.78 of the case diary, there is no material against the petitioners.

7. Having considered rival submissions of both sides and on perusal of record the admitted position in the case is that the F.I.R. is against unknown, the only evidence collected during investigation against the petitioners is the statement of the informant after a month of the occurrence merely raising suspicion against the petitioners without any basis, not showing in what manner they were involved. There is no disclosure relating to the manner of their involvement. Except the said statement recorded at para 78 of the case diary there is no other material in the case diary; the Investigating Officer also not sent up the petitioner for trial though submitted charge sheet against other accused. Further investigation also continued against rest but till final conclusion of the investigation no



other evidence was collected against petitioners. The Apex Court in the case of State of Bihar vrs. Ramesh Singh (supra) has observed as follows:

“4(b). 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 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.”

8. The only evidence collected against petitioners during investigation is the statement of informant in para 78 of the case diary, only expressing suspicion but even basis of suspicion is not disclosed. Even if this only evidence is accepted against petitioners before it is



challenged in cross-examination or rebutted by the defence evidence cannot show that petitioners committed the offence, so there is no sufficient ground for proceeding with the trial against the petitioners accordingly discharged and the impugned order is hereby set aside along with further criminal proceeding only against the petitioner in S.T. No.1020 of 2006.

9. In the result, the quashing petition is allowed.

(Arun Kumar, J)

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