

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29711 of 2016

Arising Out of PS.Case No. -14 Year- 2011 Thana -RAJNAGAR District- MADHUBANI

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Bipin Kumar Jha, son of Sri Tara Nand Jha, resident of village Jarsain, P.S.
Rajnagar, district Madhubani Petitioner

Versus

1. The State of Bihar & Anr
 2. Satish Chandra Mishra, son of late Bhikiya Mishra, resident of village
Dhakajari, P.S. Arer, district Madhubani, presently residing at village Chakda,
P.S. Rajnagar, district Madhubani Opposite Parties
- =====

Appearance :

For the Petitioner : M/S Soni Shrivastava, Abhishek Anand & Madhuri
Kumari, Advs.

For the State : Mr. Choubey Jawahar, APP 158

For the informant : Mr. Ratnakar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 22-02-2017

Heard the learned counsel for the petitioner, the informant and the State.

2. This is a petition for quashing the order, dated 01.06.2016, passed by the Subdivisional Judicial Magistrate, Madhubani in Rajnagar P.S. Case No. 14 of 2011 (Tr. No. 1817 of 2016 and G.R. No. 105 of 2011).

3. The petitioner is the only accused in connection with Rajnagar P.S. Case No. 14 of 2011, registered under Section 379 of the Indian Penal Code. The petitioner had filed a petition for discharge before the learned Court below under Section 239 of the Criminal Procedure Code. The prayer was refused by the impugned order.

4. The refusal, aforesaid, is under challenged in this application under Section 482 of the Criminal Procedure Code.

5. Submission of the petitioner is that whole prosecution is based on suspicion and suspicion is not supported by any tangible evidence, hence, criminal prosecution of the petitioner is an abuse of the process of the



Court. More over, the impugned order would reveal that the Court below has noticed material in paragraphs 7, 8, 10, 15 and 28 of the case diary for coming to the conclusion that there is sufficient material for framing of charge against the petitioner. The finding is perverse one and suffers from error of record.

6. On the other hand, learned counsel for the State as well as the informant opposed the prayer on the ground that charge has already been framed, hence, the prayer for discharge is infructuous now. More over, even suspicion is sufficient to frame charge against the petitioner, hence, the impugned order requires no interference.

7. The prosecution case as disclosed in the first information report is that informant left his house on 31.12.2010 for Darbhanga. He forgot to take the automated teller machine (ATM) card and identity card, put in an envelop and kept at the table of the room. On 3rd January, 2011, the informant issued a cheque, which could not honoured by the Bank and the Bank informed that there is no sufficient money in the account and entire money has been withdrawn through automated teller machine on 02.01.2011 and 03.01.2011. Thereafter, the informant telephoned to his wife regarding where-about of the automated teller machine card. The wife searched the almirah and other places of the house and informed to the informant regarding missing of the automated teller machine card. Thereafter, informant enquired about who had come in the house in between aforesaid period. The wife disclosed that the petitioner who was tenant had come in the house. Therefore, suspicion is against the petitioner.

8. The perusal of the case diary reveals that paragraph



7 of the case diary contains the place of occurrence. Paragraph 8 of the case diary contained statement of wife of the informant wherein she stated that the petitioner had entered into the house. Subsequently, the petitioner was found missing from the house and soon thereafter the petitioner informed that he is going to vacate the house. Paragraph 15 of the case diary is simply statement of the police that the police had written to the Bank to get the information that who has withdrawn money from the Bank. However, the case diary does not reveal that any information was received from the Bank. Paragraph 28 of the case diary simply contains the direction of the superior authority to submit charge sheet against the petitioner.

9. This Court has referred the aforesaid paragraphs specially for the reason that the learned trial judge has relied on those evidences.

10. Thus, from the material, available on record, it is evident that only suspicion is there against the petitioner without any cogent material to substantiate it. Two views are possible regarding commission of the crime, alleged by the petitioner. In the case of **Yogesh @ Sachin Jagdish Joshi Vrs. State of Maharashtra, reported in (2008) 10 SCC, 394**, the Hon'ble Apex Court held that by and large, however, if two views are equally possible and the judge is satisfy that the evidence produced before him gives rise to suspicion only as distinguished of grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will rebut in conviction or in the broad test, would be material on record, if unrebutted makes a conviction reasonably possible.



11. In the present case, if the material, available on record, is taken as legal evidence against the petitioner, the conviction can not be awarded, hence, continuation of the criminal proceeding would amount to an abuse of the process of the Court.

12. In the case of **Dilawar Balu Kurane Vrs. State of Maharashtra reported in (2002) 2 SCC, 135**, the Hon'ble Apex Court considered the function of the judge under Section 227 of the Criminal Procedure Code and paragraph 12 of the judgment as follows :

“12 : Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”



13. In view of the facts of this case and law, discussed above, I do not find any merit in the submission of the learned counsel for opposite party that since charge has been framed in this case, this Court is helpless to prevent an abuse of the process of the Court.

14. Accordingly, the impugned order and entire criminal proceeding is **quashed** and this application stands **allowed**.

(Birendra Kumar, J)

SA/-

AFR/NAFR	AFR
CAV DATE	
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