

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42082 of 2016

Arising Out of PS.Case No. -83 Year- 2011 Thana -DARAUNDA District- SIWAN

- =====
1. Akhilesh Kumar @ Akhilesh Singh @ Akhileshwar Singh Son of Late Naw Nath Singh
 2. Suraj Singh Son of Sivil Singh Both are Resident of Village-Sawan Bigras, P.S.- Daronda, District-Siwan

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nilesh Kumar

For the Opposite Party/s : Mr. Sri Arun Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 20-04-2017

Heard learned counsel for the petitioners and

learned counsel for the State.

The present application has been filed for quashing the order dated 17.08.2016, passed by learned Additional District & Sessions Judge-III, Siwan in Sessions Trial No. 91 of 2013, arising out of Daronda P.S. Case No. 83 of 2011, whereby petitioners' application for discharge under Section 227 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') has been rejected.

The prosecution case would unveil that it got initiated on the written report dated 11.6.2011, of Munindra Nath Singh to the effect that on the same day at 8 A.M., the informant



was taking out husk from his fodder room, in the meantime, Petitioner no. 1 Akhilesh Singh directed the informant not to take out fodder, which was protested, upon which Akhilesh Singh brought rifle from his house and started firing and exhorted to kill the informant. Thereafter, co-accused Kanhaiya Singh, Suraj Kumar Singh (petitioner no. 2) resorted to firing from country made pistol. The informant ran from the scene and concealed himself behind the door, in the meantime, the villagers namely Uma Shankar Singh, Harendra Singh and Ravindra Singh came. Such allegations led to the registration of Daraunda P.S. Case No. 83 of 2011 under sections 307/34 IPC and section 27 of the Arms Act.

On conclusion of investigation, final form (chargesheet) was submitted under sections 307/34 of the IPC and section 27 of the Arms Act and consequently, the learned Magistrate took cognizance under the aforesaid provisions. The petitioners filed an application for discharge. The same was rejected vide order dated 17.8.2016, by the learned ADJ – 3, Siwan. The said order has been impugned in the present proceeding.

Learned counsel for the petitioners submits that though there is allegation against all the accused persons



including the petitioners to have resorted to firing, but, admittedly, no injury was caused to anyone which suggests that the petitioners did not have any intention to kill. It is further submitted that the informant is the own uncle of the petitioners and Partition Suit No. 557 of 2008 is pending between the parties. At an earlier point of time the informant's side had attacked the family members of the petitioners. Moreover, the present informant and others killed Kanhaiya Singh, with regard to which the son of Kanhaiya Singh namely Bablu Kumar Singh lodged Maharajganj P.S. Case No. 231 of 2013 under sections 147,148,149 and 302 of the IPC. Hence, the accusation has been levelled in the background of litigated relationship between the petitioners and the informant. The impugned order also does not suggest that the entire material collected during investigation has been considered by the learned court below.

On the other hand, learned counsel for the informant submits that the charges can be framed even on strong suspicion. In the present case, there is specific accusation against the petitioners that they resorted to fire. Even if no injury was caused to the informant, the offence under section 307 of the IPC is made out as the accusation reflects that the petitioners and others had the intention to kill.



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 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. Section 227 of the Code deals with the discharge of accused, 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.”



At the stage of section 227 of the Code, the court has only to see whether the accusation constitutes offence or not to reach to a conclusion that prima facie case is made out as has been held in the case of Onkar Nath Mishra & Ors. Vs. State (NCT of Delhi) & Anr. (2008) 2 Supreme Court Cases 561. Paragraph 11 reads as follows:

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”



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.”

So far as the question of petitioners' plea, that there were series of litigations between the parties and hence, the accusation has maliciously been levelled, is concerned, it is well settled view that section 227 of the Code does not permit the accused to file any material or documents at the stage of consideration of discharge or framing of charge. Though for the first time, a different view was taken in the case of Satish Mehra Vs. Delhi Administration and Anr. (1996) 9 Supreme Court Cases 766 where it was held that if the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, then such material can be considered. Paragraph Nos. 13 and 14 read as follows:

“13. Similar situation arises under Section 239 of the Code (which deals with trial of warrant cases on police report). In that situation the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering



the police report and the documents sent therewith. At these two stages the code enjoins on the Court to give audience to the accused for deciding whether it is necessary to proceed to the next stage. It is a matter of exercise of judicial mind. There is nothing in the Code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the Court at that stage. Here the "ground" may be any valid ground including insufficiency of evidence to prove charge. 14. The object of providing such an opportunity as is envisaged in Section 227 of the code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.”



The above said view was doubted and the matter was referred to a three Judges bench in the case of State of Orissa Vs. Debendra Nath Padhi (2005) 1 Supreme Court Cases 568 where the Apex Court has elaborated the meaning of expression 'the record of the case' and the word 'case' used in Section 227 of the Code. Hence, no provision of the Code gives the accused right to file any material or document at the stage of framing of charge except the document and articles produced with the police report submitted under section 173(2) of the Code. Paragraphs 18 and 23 read 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.”

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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