

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.700 of 2017

Arising Out of PS.Case No. -614 Year- 2010 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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1. Amarendra Kumar Singh @ Dadan Singh,
2. Dharmendra Kumar Singh, Both are sons of Late Brijnandan Singh,
Resident of Mukundpur Bhath, Police Station- Jandaha, District- Vaishali.

.... Appellant/s

Versus

1. The State of Bihar.
2. Lauki Paswan, Son of Late Shivnandan Paswan @ Shiva Paswan,
Resident of Vishannpur Silauthar, Police Station- Jandaha, District-
Vaishali.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shravan Kumar, Sr. Adv.

Mr. Dinesh Maharaj, Adv.

For the Respondent/s : Mr. Binay Krishna, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 17-05-2017 Present appeal has been preferred by the appellants under

Section 14A of the Scheduled Castes/Scheduled Tribes
(Prevention of Atrocities) Act, for setting aside the order dated
19.12.2016 passed by Special Judge, Vaishali at Hajipur in Tr. No.
217/15 arising out of C1 No. 614/10, whereby and whereunder
appellant's application for discharge from the offences punishable
under Section 3(i)(x) of SC & ST (Prevention of Atrocities)Act,
was dismissed.

It has been submitted on behalf of the appellants that
prior to filing of the present case by the complainant, they have
already filed a case against complainant and others and only in
retaliation, this present false case has been filed by him, however,



the allegations does not show any offence attracting the penal provisions of SC & ST (Prevention of Atrocities) Act, and as such earlier cognizance has also not been taken against appellants under SC & ST (Prevention of Atrocities) Act, however, informant preferred revision and the same was allowed, without hearing the appellants and the matter was remitted back to the court concerned and, thereafter, the cognizance was taken against the appellants. It has been submitted that the aforesaid order was against the principle of natural justice. It has also been argued that the appellants, filed petition before the Special Judge, Vaishali at Hajipur, for discharge from the offences under Sections 3(i)(x) of SC & ST (Prevention of Atrocities)Act, on the ground that no case under the above mentioned section of SC & ST Act, is made out against the appellant, which has been dismissed in a very cursory manner without assigning any reasons or without any reasoned order, as such, order dated 19.12.2016 is bad in law. It has further been submitted that upto now charge has not been framed in this case.

Learned Special Public Prosecutor opposed the present appeal and submitted that there is no illegality in the order passed by learned Special Judge.

Having heard both sides, as stated above, appellants have challenged the impugned order by which appellants' petition for



discharge has been rejected under Section 227 Cr.P.C. by the Special Court. So far argument of learned counsel for the appellants that no opportunity has been provided to the appellants of being heard in the Criminal Revision filed by the informant and order remitting the matter back to the court concerned has been passed on the back of the appellants, is concerned, the aforesaid order has now reached finality, as the appellants has not challenged the aforesaid order and has preferred to participate in the proceeding even after remand, hence, this Court is not going to interfere with the order passed in Criminal Revision No. 154/2010.

However, so far argument of learned counsel for the appellants that the order dismissing the discharge petition of the appellants is cryptic and no specific reason is assigned for dismissal of the discharge petition. From perusal of the impugned order, it appears that learned Special Court has dismissed the discharge petition of the appellants only on the ground that there are sufficient materials available on record for framing charge against the appellants, however, the learned Special Court has not disclosed as to what are those materials. Further to my opinion, once a petition for discharge is filed under Section 227 on the ground that no sufficient materials is available, then while disposing of the said petition, the court below has to mention substance on the basis of which, he has found sufficient materials



available on record. The Hon'ble Supreme Court also in a case reported in **(2017) 3 SCC Ajay Singh V. State of Chhattisgarh** held that:-

“Chapter XVIII of [CrPC](#) provides for trial before a court of session. [Section 227](#) empowers the trial judge to discharge the accused after hearing the submissions of the accused and the prosecution and on being satisfied that there is no sufficient ground for proceeding against the accused. The key words of the Section are “not sufficient ground for proceeding against the accused”. Interpreting the said provision, the Court in [P. Vijayan v. State of Kerala and another](#)[4] has held that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. At the stage of [Section 227](#), the Judge has merely to sift the evidence in order to find out



whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

In such view of the matter, order dated 19.12.2016 passed by Special Judge, Vaishali at Hajipur, in Tr. No. 217/15 arising out of C1 No. 614/10, is not sustainable in the eye of law and the same is, hereby, set aside, the matter is remitted back to the Special Judge, Vaishali, Hajipur, who will consider the application of the appellants afresh and dispose of the same by reasoned and detailed order.

Accordingly, this appeal is allowed.

(Vinod Kumar Sinha, J)

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