

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.177 of 2018

Arising Out of PS.Case No. -65 Year- 2009 Thana -SC/ST District- BEGUSARAI

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1. Daljit Singh, S/o Late Eqbal Singh, resident of Mohalla- New Colony Ulao,
Thana- Muffasil, District- Begusarai, Presently residing at House No. 13 GTB
Nagar, Jamalpur Road, P.S.- Jamalpur, District- Ludhiana, Punjab.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Saket Tiwary, Advocate
For the State	:	Mr. Sadanand Paswan, SPP
For the Respondent/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ashish Giri, Advocate Mr. Sandeep Gautam, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date: 17-04-2018

Heard learned counsel for the parties.

2. This appeal has been preferred under Section 14A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by one of the accused i.e., Daljit Singh of Begusarai SC/ST P.S. Case No.65 of 2009, corresponding to Sessions Trial No.301 of 2016. By the impugned order, dated 01.12.2017, the learned Special Judge (SC/ST Act), Begusarai, has rejected the prayer of the appellant to discharge.

3. The prosecution story as enumerated in the FIR is that informant Manju Devi was domestic help of Mr. B.S. Saheb (Bhupendrajit Singh). On 18.04.2009 the appellant and two other



co-accused entered into her residence, which was a servant quarter, with some illicit motive and all the three caught her. When the informant made alarm and attempted to come out of their clutches, co-accused Onkarjit Singh put his hands on her mouth and co-accused Rajbir Singh and the appellant pushed her on the ground and started abusing by taking caste name and threatening that the informant always shows her attitude to the accused persons; though the informant is surviving on their left-over. She further alleged that all the three had teased her in the past also on the way. However, she kept mum as she belongs to the scheduled caste society.

4. Initially, a complaint case was filed bearing Complaint Case No.1079C of 2009 for the occurrence dated 18.04.2009 on 04.05.2009. The learned Magistrate directed the police to institute a police case under Section 156(3) Cr.P.C. and accordingly the aforesaid police case was registered. After completion of investigation the police found the case untrue and submitted a closure report, though three witnesses had supported the occurrence as eyewitness before the police.

5. During pendency of the investigation, the informant had already filed protest petition on 17.06.2009 alleging that the police is in collusion with the accused persons. On 20.03.2013, the learned Chief Judicial Magistrate, Begusarai, took cognizance in the case for the offences under Sections 323, 354 and 452 of the



Indian Penal Code as well as under Section 3(1)(x)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, differing with the police report vide Annexure-3. The said cognizance order was challenged by the accused persons before the learned Sessions Judge, Begusarai, in Cr. Revision No.310 of 2013 and after dismissal of the criminal revision on 14.12.2013 the same was challenged before this Court in Cr. Misc. No.12468 of 2014. This Court by order dated 25.03.2014 affirmed the cognizance order and the order of the Revisional Court with liberty to the accused to raise all the contentions at the time of framing of the charge. Thereafter, the appellant raised his grievance before the learned Court-below, which was turned down by the impugned order.

6. Contention of the learned counsel for the appellant is that in fact there is property dispute between Bhupendrajit Singh and his brother, who is co-accused in this case, and several litigations at different level is going on. For that reason the maid of Bhupendrajit Singh has been set up by Bhupendrajit Singh to set scores with the appellant and other accused and with intent to oust the co-accused Onkarjit Singh from the property at Begusarai. One of the full brother of Onkarjit Singh and Bhupendrajit Singh namely, Inderjit Singh had also lodged Complaint Case No.1001C of 2009 against co-accused Onkarjit Singh and Rajbir Singh on



18.04.2009 alleging demand of ransom by the accused persons. The informant of this case was a witness of that case. That complaint was dismissed on 20.08.2009 vide Annexure-7 by the learned Magistrate. Another Complaint case was filed by same Inderjit Singh vide Annexure-8 bearing Complaint Case No.1069C of 2009 against Rajvir Singh, nephew of Onkarjit Singh, alleging that on 24.04.2009 he had committed murderous assault on the complainant for non-payment of the ransom demanded on 18.04.2009 vide complaint at Annexure-7. This complaint was also dismissed on 10.08.2010 by the same Magistrate. The present complaint third in series has been filed just to pressurize the accused with mala fide intention.

7. Learned counsel for the appellant has relied on the case of **Harshendra Kumar D. V. Rebatilata Koley and others** reported in **(2011) 3 Supreme Court Cases 351**, for his contention that for quashing of criminal proceeding consideration of defence at prima facie stage by High Court under revisionary power or under inherent powers is not absolutely barred. Contention is that in order to prevent injustice or abuse of process or to promote justice, this Court may look into the material which has significant bearing on the matter, at prima facie stage.

8. To counter the aforesaid submission, learned counsel for the informant contended that the law is well settled that even



suspicion based on material on the record would be enough to allow framing of the charge and trustworthiness of the material would be tested only at the stage of trial. The issue has been settled by a catena of decisions that if upon consideration of the record and after hearing the parties the Court is of the opinion that there is ground for presuming that the accused has committed an offence, the Court shall frame in-writing a charge against the accused. At this stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is there to end in his conviction. Contention is that applying the aforesaid yardstick, it would be evident that three witnesses have supported before the police that when they reached at the place of occurrence, on alarm, they saw the appellant and others committing the offence alleged, against Manju Devi and in their presence also the appellant and others abused Manju Devi by taking caste name. Submission is that prima facie there is sufficient material on the record to proceed with the trial and it would have come after the stage of defence evidence to see the mala fide etc. of the prosecutor. As such, the Court-below is wholly justified in rejection of the prayer of the appellant.

9. Learned counsel has relied on the judgment of Hon'ble Apex Court in **Rajbir Singh V. State of Uttar Pradesh** reported in (2006) 4 SCC 51 in support of his contention regarding the parameters for consideration of prosecution material at the stage



of framing of the charge. Learned counsel has next submitted that this Court had granted anticipatory bail to accused Onkarjit Singh, which was challenged by informant Manju Devi in Cr. Appeal No.570 of 2017 before the Hon'ble Supreme Court. The Hon'ble Supreme Court has set aside the order of this Court granting anticipatory bail and observed in paragraph-19 of the judgment as follows:

“With regard to the plea that the complaint filed by the complainant is false and malicious and to wreak vengeance by the brother of respondent No.1 herein, we are of the view that it cannot be looked into at the stage of taking of cognizance and issuance of process and the mala fide or bona fide of a case can only be taken into consideration at the stage of trial.”

10. In **Rajbir Singh** (supra), the Hon'ble Apex Court quoted its earlier judgment in **State of Bihar V. Ramesh Singh reported in (1977) 4 SCC 39** as follows:

“Reading [Sections 227 and 228] together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to



consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. 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 proceedings against the accused....If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused 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.”

11. Hon’ble Supreme Court further quoted earlier view in **Stree atyachar virodhi Parishad v. Dilip Nathumal Chordia** reported in **(1989) 1 SCC 715** regarding scope of inquiry under Section 227 Cr.P.C. which reads as follows:



“...Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that ‘the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused’. The ‘ground’ in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate inquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime.”

12. Considering the aforesaid parameters and materials available on the record, as referred above, it is evident that there is material on the record for presuming that the appellant and others have committed the offence alleged. Hence, the view taken by the learned Court-below is consistent with the record, which cannot be faulted.

13. Learned counsel for the appellant submits that the observation of the Hon’ble Apex Court in Manju Devi case was while considering the interlocutory matter on correctness of the order granting anticipatory bail by this Court. Hence, the observation cannot be looked into as binding precedent.



14. Though in Manju Devi case aforesaid the observation of the Supreme Court is in the matter of consideration of an interlocutory matter regarding correctness of the order of anticipatory bail, however, the said observation is in this very case, as such, has persuasive value for this Court to hold that the defence of mala fide of the prosecution can be taken into consideration at the time of trial only.

15. In **Harsendra Kumar D** (supra), relied by learned counsel for the appellant, the Supreme Court observed that criminal prosecution is serious matter as it affects the liberty of a person. Hence, in appropriate cases, if on the face of documents, which are beyond suspicion or doubt, the accusations against accused cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence. In **Harshendra Kumar** case, the offence was committed by the Company and prior to commission of the offence by the Company the appellant Director had resigned, which was undisputed documentary evidence on the record. However, the appellant was being prosecuted in that case. The prosecution was quashed by the Hon'ble Supreme Court and in para-25 of the judgment it was observed as follows:

“In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials



relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents- which are beyond suspicion or doubt- placed by the accused the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.”

16. The aforesaid case is not helping the appellant for the reason that in that case also the Supreme Court observed, as highlighted above, that it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusation. Moreover, in the present case, there is no direct motive against the informant based on undisputed material for



initiating mala fide prosecution. The disputed question of fact that she has been set up by one of the brother to wreak vengeance is yet to be established during course of the trial. Since, the informant was a witness in the earlier complaint cases referred above, lodged by one of the brother against his brother or nephew, may be a reason for commission of the crime against her or may a reason for mala fide institution of the case at the instigation of the co-sharer Mr. Bhupendrajit Singh in whose house the informant was a maid. However, this issue can be considered only at the stage of trial after examination and cross-examination of the witnesses produced on the point.

17. Learned counsel for the appellant submits that the occurrence allegedly took place on 18.04.2009. However, the complaint petition was filed on 04.05.2009 and there is no reasonable explanation for delayed filing of the complaint petition, which apparently shows mala fide of the informant for the reason that the person in whose house the informant was maid had also filed a complaint vide Annexure-7 for the occurrence of same date and the complainant was a witness on that complaint but there is no whisper in that complaint about the present occurrence.

The delay in filing of the complaint cannot be a ground for discharge because this is an issue of trustworthiness of the prosecution version which can be looked into only at the stage of



trial.

18. Next contention of the learned counsel for the appellant is that there is non-compliance of requirement of Section 154(3) Cr.P.C. which requires that in the event of refusal of institution of the FIR by the police, a written complaint ought to be sent to the Superintendent of Police. The aforesaid provision has not been complied nor there is such averment of compliance in the complaint petition. As such, the institution of the case is itself bad in view of the ratio decided by the Hon'ble Supreme Court in **Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others** reported in **(2015) 6 SCC 287**.

19. To counter the aforesaid submission, learned counsel appearing on behalf of the informant submits that this issue should have been raised at the earliest stage. The appellant did not raise this issue at the time of challenging the cognizance order before this Court. Hence, the same cannot be challenged at this stage when this Court is hearing appeal to examine the correctness of the order of the learned trial Judge regarding refusal of prayer for discharge.

It is evident that the appellant has not raised the aforesaid issue at the earliest opportunity. Hence, the same cannot be agitated at this stage.

20. For the aforesaid reason, I do not find any reason to interfere with the impugned order.



21. Accordingly, this appeal stands dismissed as devoid
of any merit.

(Birendra Kumar, J)

Mkr./-

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