

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4699 of 2017**

Arising Out of PS. Case No.-43 Year-2012 Thana- PAUTHU District- Aurangabad

Arvind Sharma S/O Late Babulal Sharma, Resident of Achuki, P.S.- Pauthu,
District- Aurangabad. Petitioner/s

Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bipin Kumar-Advocate

For the Opposite Party/s : Mr. Jagdhar Prasad-A.P.P.

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER**

2 17-05-2019 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner has challenged the order dated 28.09.2016 passed by the 7th Additional Sessions Judge, Aurangabad in Sessions Trial No.292 of 2014/ 396 of 2015 whereby and whereunder a petition under Section 227 of the Cr.P.C. has been rejected.

It has been submitted at the end of the petitioner that this case happens to be a malicious prosecution, whereupon the proceeding would not survive. To justify such submission, referred Annexure-2, a complaint petition (Complaint Case No.239 of 2009) having at the end of the father of the victim showing the date of occurrence as 12.03.2009, against the accused persons so named therein for attempting upon the same victim to commit rape and then, got it compromised (Annexure-



2/1). Now, in the background of land dispute projected the victim and got this case filed again alleging an attempt for commission of rape. That being so, the learned lower Court should have considered the aforesaid eventuality and would have discharged the petitioner.

On the other hand, learned Additional Public Prosecutor opposed the prayer.

It is needless to say that at the stage of framing of charge, neither the defence version could be considered nor, there happens to be meticulous examination of the materials having in the case diary. The principle so decided by the Apex Court in ***Amit Kapoor vs. Ramesh Chander and another reported in 2012 (9) SCC 460***, it has been held that the materials to be considered at the stage of framing of charge, would be even weaker than a prima facie case. For better appreciation Paragraph-17 is quoted below:-

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of [Section 228](#) of the Code, unless the accused is discharged under [Section 227](#) of the Code. Under both these provisions, the court is required to consider the ‘record of the case’ and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the



court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of [Sections 227](#) and [228](#) of the Code. [Section 227](#) is expression of a definite opinion and judgment of the Court while [Section 228](#) is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of [Section 228](#) of the Code.

Recently in ***State Represented by the Deputy Superintendent of Police Vigilance and Anti Corruption, Tamil Nadu v. J. Doraiswamy Etc. Reported in AIR 2019 Supreme Court 1518***, the same principle has been reiterated. Furthermore, so far activity of the High Court during course of



entertaining a petition under Section 482 Cr.P.C. on that very score, is concerned, the same has been couched at the end of Apex Court in following way:-

15. In our view, consideration of the record for discharge purpose is one thing and the consideration of the record while deciding the appeal by the Appellate Court is another thing.

16. While considering the case of discharge sought immediately after the chargesheet is filed, the Court cannot become an Appellate Court and start appreciating the evidence by finding out inconsistency in the statements of the witnesses as was done by the High Court in the impugned order running in 19 pages. It is not legally permissible.

Consequent thereupon, instant petition lacks merit and is accordingly, dismissed.

However, petitioner will be at liberty to challenge the veracity of the prosecution case during course of trial.

(Aditya Kumar Trivedi, J)

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