

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.841 of 2019

Arising Out of PS. Case No.-658 Year-2018 Thana- KHAJANCHI HAT District- Purnia

1. Amrendra Kumar Kushwaha @ Amrendra Kushwaha Son of Sukhdev Prasad Mehta Resident of Shanti Nagar Tatmatoli, P.S.- K.Hat (Maranga), District- Purnea.
2. Rakhi Devi W/o Amrednra Kumar Kuswaha Resident of Shanti Nagar Tatmatoli, P.S.- K.Hat (Maranga), District- Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Home Secretary District - Patna ,State- Bihar
2. Md. Ahsanul Hak (Incharge Superintendent Remand Home Purnia) S/o Md. Abdul Jabbar R/o Village- Pusia, P.O. Dariapur, P.S.- Sangrampur, District- Motihari (East Champaran).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kumari Ritambhara
For the Respondent/s : Mr.Manish Kumar

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 14-05-2019

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

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 30.01.2019 passed by the learned 6th Additional Sessions Judge, Purnea in Sessions Trial No. 20 of 2019 to the extent whereby charges under Sections 302 and 120-B of the Indian Penal Code (for short 'IPC') and Section 27 of the Arms Act have been framed against the petitioners along with others.

3. Learned counsel appearing for the petitioners submitted that the petitioner no.1 is the father and petitioner no.2



is the mother of one Subham Kumar Kushwaha, who was kept in Observation Home, Purnea in connection with other criminal case. While being in observation home, he fired upon the house-father of the observation home and other child staying with him, namely, Saroj Kumar and fled away from there. As far as the petitioners are concerned, there is no material to show their involvement in the alleged offence. They themselves are victims as their son was in observation home and it was expected from the authorities managing the observation home to have imparted proper training and education to him so that he may not have fallen in any bad company and would have refrained from committing such an offence. She contended that the implication of the petitioners in the instant case is only on the basis of statement of their son Subham Kumar Kushwaha wherein he had disclosed that mobile no. 7667535561 was given to him by his father, petitioner no.1, and the same stands in the name of petitioner no.2. The statement of said Subham Kumar Kushwaha has not been recorded under Section 164 of the Code of Criminal Procedure (for short 'Cr.P.C'). She further contended that for the failure on the part of the administration of the observation home, Purnea, the petitioners cannot be made scapegoat.

4. The State has contested the matter.



5. Learned counsel appearing for the State submitted that the defence taken by the petitioner cannot be made a ground for seeking discharge from the criminal prosecution. Such defence can be considered by the court in course of trial. While exercising powers conferred under Sections 227 and 228 of the Cr.P.C, the court is required to consider the record of the case and the documents submitted therewith and if there is sufficient ground to proceed against the accused, the court shall frame charge. He further contended that the court below while passing the impugned order has clearly stated that there is sufficient material in paragraphs 168, 170, 173 etc. of the case diary against the petitioners, which shows their complicity in criminal conspiracy to commit the murder of the house father Bijendra Kumar and a juvenile Saroj Kumar. He contended that it is a case of multiple murder and there is sufficient evidence in the case diary on the basis of which the trial court has framed charges against the petitioners.

6. Having heard learned counsel for the parties and perused the record, I find substance in the submission of the learned counsel for the State.

7. Section 227 of the Cr.P.C deals with discharge of an accused from a criminal case whereas Section 228 of the Cr.P.C



deals with framing of charge against an accused. They read as under :-

“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.

228.Framing of charge.-

(1) If, after such consideration and hearing as aforesaid, the Judge, is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”



8. From a conjoint reading of aforesaid Sections 227 and 228 of the Cr.P.C, it would be evident that for the purpose of determining whether there is sufficient ground for proceeding against an accused, the court has a wider discretion. At this stage, even a meticulous analysis or examination of the materials collected is not required. What is required under this provision is that the order must reflect that the court has applied its judicial mind for coming to the conclusion as to whether the materials collected are sufficient to proceed. On going through the materials on record, it can determine the question as to whether if unrebutted, material is such on the basis of which conviction can be said reasonably to be possible. At the stage of framing of charge, probative value of material on record cannot be assessed. At this stage, the prosecution is not required to prove beyond reasonable doubt that the accusation is bound to ensure conviction. The purpose of the aforesaid provisions is to ensure that the accusation made against the accused is not frivolous and there is material to proceed against him.

9. While passing the order impugned the court below has expressed its satisfaction that there exists sufficient material on the basis of the statements made in paragraphs 168, 170 and 173 etc. of the case diary.



10. So far as the contention of the petitioners that they were not present at the place of occurrence when the offence had taken place is concerned, the same would be of no consequence as the involvement of the petitioner in the instant case under Section 302 of the IPC is with the aid of Section 120-B of the IPC, which prescribes punishment for the offence of criminal conspiracy.

11. The term ‘criminal conspiracy’ has been defined under Section 120-A of the IPC. It provides that when two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

12. The proviso to definition of criminal conspiracy under Section 120-A of the IPC stipulates that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

13. Thus, the essence of criminal conspiracy is unlawful combination and offence is complete when the combination is framed. To bring home the charge of conspiracy within the ambit of Section 120-B of the IPC, the physical presence of a person is not required to be proved. The only requirement is to establish that



there was an agreement between the parties for doing an unlawful act.

14. Since the meticulous analysis of the materials collected in course of investigation is not to be made at the stage of framing of charge, even if there is material to suggest that there was meeting of mind between the petitioners and their son, the main accused, who is alleged to have committed the offence, framing of charge against the petitioners cannot be held to be bad in law.

15. Keeping in mind the discussions made above, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
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