

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.63247 of 2018

Arising Out of PS. Case No.-64 Year-2005 Thana- KHAJANCHI HAT District- Purnia

DR. BRAHAMDEO YADAV @ BRAHAMDEO KUMAR @ DR.
BRAHAMDEO KUMAR Son of Late Yugeshwar Prasad Yadav, resident of
Bihar Talkies Road, Line Bazar, P.S. K. Hat, District- Purnia.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N. K. Agrawal-Sr. Advocate
Mr. Kumar Praveen-Advocate
For the Opposite Party/s : Mr. Parmeshwar Mehta-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 31-01-2019 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

2. Petitioner is aggrieved by an order dated
05.09.2018, whereby and whereunder the Court of 4th Additional
Sessions Judge, Purnia in Sessions Trial No.42 of 2017 has been
pleased to reject the petition filed on behalf of petitioner
purported to be under Section 227 of the Cr.P.C.

3. It has been submitted at the end of the petitioner
that no offence is made out against the petitioner, because of the
fact that A) none is an eye witness to occurrence, B) there
happens to be no material on record to suggest connectivity in
between, C) post mortem report does not justify the manner of
occurrence, D) after investigation, police had submitted case



true, but clue not found, so basically, this happens to be the case of no evidence. Apart from this, it has also been submitted that even considering the prosecution case as it stands, even then, presence of petitioner has not been shown and so, it happens to be a fit case wherein learned lower Court should have discharged the petitioner under Section 227 of the Cr.P.C.

4. The learned Additional Public Prosecutor opposed the prayer.

5. As per allegation, while the deceased was constructing hut on the alleged date that means to say, on 24.02.2005 at about 2.30 P.M., firing was made from the house of Dr. Brahamdeo Yadav (under construction) over sister's son of the informant causing injury over his thigh, which ultimately cost his life. It has further been disclosed that at an earlier occasion, there was dispute on account of projecting the spring of the house towards his land and so, informant apprehended that at the instance of Dr. Brahamdeo Yadav, his bhagina was shot at.

6. From the order impugned as well as different Annexures, it is apparent that police after concluding investigation had not arrayed the petitioner as an accused, but differing there from, considering Para-10, 19 and 46 of the case



diary, the learned C.J.M. took cognizance of an offence and in likewise manner, summoned the petitioner to face trial. Furthermore, as is evident from the order impugned, the learned lower Court had also considered the materials having under Para-10, 19 and 46 of the case diary.

7. What should be the approach of the Court while considering the prayer for discharge under Section 227 of the Cr.P.C. has been subject to consideration in ***Amit Kapoor vs. Ramesh Chander and another reported in 2012 (9) SCC 460***, it has been held 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.

8. In likewise manner, in ***State by the Inspector of Police, Chennai vs. S. Selvi and another reported (2018) 13 SCC 455***, it has been held:-

“6. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Samal, (1979) 3 SCC 4; Dilawar Babu v. State of Maharashtra (2002) 2 SCC 135 Sajjan Kumar v. CBI (2010) 9 SCC 368; State v. A. Arun Kumar (2015) 2 SCC 417; Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424; State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711; Niranjana Singh Karam Singh Punjabi etc. v. Jitendra Bhimraj Bijayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunia (1979) 4 SCC 274 that the Judge while



considering the question of framing charge Under Section 227 of the Code in sessions cases (which is akin to Section 239 Code of Criminal Procedure pertaining to warrant cases) 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; where the material placed before the Court disclose grave suspicion against the Accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the Accused, he will be fully within his rights to discharge the Accused. The Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.”

9. After having deep consideration of the principle laid down by the Hon’ble Apex Court, though **Amit Kapoor’s Case** has not been considered in **S. Selvi’s Case**, but mode of appreciation of the materials more or less happens to be the



same and during course thereof, it has conclusively been held that the approach of the trial Court should not be like doing a roving inquiry and further, the scrutiny of the materials should not be like a trial.

10. In the aforesaid background, whatever been argued at the end of the petitioner requires in depth scrutiny, which at the present moment is forbidden. Contrary to it, there happens to be consistent version that firing was made from the house of Dr. Brahamdeo Yadav (being under construction) and so, in the background of dispute, the status of the petitioner is found properly recognized.

11. Consequent thereupon, instant petition sans merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

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