

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.2 of 2018

Arising Out of PS. Case No.-101 Year-2016 Thana- ITARHI District- Buxar

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Gyan Prakash Chaudhary @ Gyan Choudhary Son of Vishram Choudhary,
Resident of Village- Kukurha, Police Station- Itarhi, District- Buxar.

... .. Petitioner/s

Versus

1.The State Of Bihar
2.Nakhruddin s/o Phulan Mian r/o village and P.O.-Kukudha, P.S. Itarhi,
District Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Surendra Kumar Choubey, Adv
For the State	:	Mr. Sri Asharaf Ansari, APP
For the Informant	:	Mr. Ajit Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 28-01-2019

Heard parties.

2. This criminal revision application has been filed for setting aside the order dated 22.11.2017 passed by learned Fast Track Court-II, Buxar in Sessions Trial No. 175 of 2017 (arising out of Itarhi P.S. Case No. 101 of 2016), by which the petition dated 22.09.2017 filed on behalf of the accused-petitioner under Section 227 of the Cr.P.C has been dismissed.

3. FIR was instituted on fardbeyan of Nakhruddin on 08.08.2016 at 10:35 am before the Officer-in-Charge Itarhi P.S at Sadar Hospital, Buxar alleging that on 07.08.2016 while he was sleeping in the night he heard a hulla that his uncle Md. Abbas Mian and aunt Jamila Khatoon had been shot and on



getting said information he rushed to his uncle's house and saw two motorcycles whereupon on one motorcycle his cousin brothers Shera Hussain and Moharam Mian and Munir Dafali and upon another motorcycle Vinod Rajak, Ravi Ranjan Rajak and Shamsher Mian were fleeing from the village. Informant has further alleged that he saw Gyan Chaudhary (petitioner) and Ram Awadh Koiri fleeing inside the village from the place of occurrence and when he entered the house he saw his uncle and aunt were shot and profusely bleeding. His cousin sister Rehana Khatoon was weeping saying that Shera Hussain, Moharam Mian, Shamsher Mian, Munir Dafali, Vinod Rajak, Ravi Ranjan entered the house and specific allegation is against shera Hussain of firing on her father and mother and she saw the occurrence but did not come out due to fear. She further stated that when she came out after they fled away she saw Gyan Choudhary (petitioner) and Ram Awadh Koiri also fleeing. It is further alleged that on account of land dispute with deceased Shera Hussain in conspiracy and connivance with Gyan Choudhary (petitioner) committed the crime.

4. It has been submitted on behalf of petitioner that he is innocent and has committed no offence and has been falsely implicated in this case only on the basis of suspicion. During



the course of investigation two FIR named accused namely Moharam Mian and Munir Dafali who were said to be present at the place of occurrence by the Informant have not been chargesheeted and accusation against them has been found to be false. It has been submitted that only reason for implicating petitioner in this case is land dispute with deceased but petitioner had no land dispute with deceased and he has been made accused only on suspicion. There is no allegation even in the FIR of any overt act committed by the petitioner but it was only a co-incident that at the time of occurrence he was present outside the place of occurrence and as a matter of fact he was going towards his village and on hearing sound of firing he fled away from the place of occurrence which was a normal and natural reaction expected from any person present there. Allegation of entering into conspiracy for killing deceased because of land dispute is also baseless and there is no evidence in entire investigation to support said allegation.

5. Petitioner filed a petition under section 227 of Cr.P.C on 22.09.2017 for discharge before the trial court on the ground that there is no evidence found against the petitioner during entire investigation and charges made against petitioner are groundless and as such he should be discharged. It has



further been submitted that time of alleged occurrence is 23 hours on 07.08.2016 but fardbeyan was recorded on 08.08.2016 at 10:35 am, although inquest was prepared on 08.08.2016 at 7:30 am, as such the implication of petitioner in the FIR which was recorded at 10:35 am is an afterthought.

6. The trial court while considering the discharge petition of the petitioner has referred different paragraphs of case diary and has found that in para 6 and 7 of case diary re-statement of Informant and statement of Rehana Khatoon aged about 13 years and daughter of deceased have supported the allegation against petitioner as alleged in fardbeyan. In para 8 of the case diary Halfat Begum in para 9 of case diary witnesses Najabir Hussain have supported the prosecution case. In para 31 and 32 of case diary witnesses have supported the motive for the alleged crime and conspiracy hatched by petitioner to kill the deceased, which have been further supported in para 33 and 34 of the case diary. The land of deceased was sold to petitioner and other accused and as such there is motive alleged against petitioner of conspiracy with other accused to kill the deceased. In para 45 and 46 of case diary as well as para 89 and 92 of the case diary the co-accused persons have confessed before the police regarding complicity of petitioner in the alleged offence



along with them.

7. The trial court after considering and discussing all the evidence which has been collected during investigation against petitioner has held that there is sufficient evidence against accused petitioner and charges are not groundless. There are sufficient and strong evidence against the petitioner of being one of the conspirator to kill the deceased and he was also present outside the place of occurrence at the time of occurrence and was seen fleeing away from the place of occurrence after commission of crime and he was member of unlawful assembly to commit the murder of deceased in pre-planned manner in furtherance of common object and with common intention and there are sufficient materials to frame the charges against the petitioner and accordingly discharge petition was rejected. Subsequent to the rejection of discharge petition charges has also been framed against petitioner.

8. Learned counsel for the petitioner in support of his contention has relied upon the judgment of this Court in the case of **Shiv Kumar Vs The State of Bihar** since reported in **2018(1) PLJR 412** as well as judgment of the Apex Court in the case of **Dilawar Balu Kurane vs State of Maharashtra** since reported in **(2002) 2 SCC 135**, referred paragraph



whereof reads as follows:-

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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 materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see *Union of India v. Prafulla Kumar Samal* since reported in (1979) 3 SCC5).

9. The Apex court in its judgment and order passed in **Amit Kapoor vs Ramesh Chander and Anr** since reported in



(2012) 9 SCC 460 has considered ambit and scope of revisional jurisdiction exercised by the High Court and para 12 and para 18 of the said judgment is quoted hereinbelow:-

12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be



exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

10. After hearing the parties and considering the materials available on record and perusing the order passed by the trial court as impugned, this Court does not find any illegality or irregularity or error in the order passed by the trial Court.

Accordingly, this criminal revision petition is dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
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