

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47963 of 2015

Arising Out of PS. Case No.-166 Year-2013 Thana- NAYA RAM NAGAR District- Munger

Parmanand Yadav Son of Shri Rajaram Yadav, Resident of Village - Bahadur Nagar (Shivram Choudhary Tola), P.O. - Kutloopur, P.S. - Muffasil, District - Munger. Petitioner/s

Versus

The State Of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Thakur, Adv
: Mr. Pravin Kumar, Adv
For the Opposite Party/s : Mr.C.Sen Pd.Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 10-07-2019

Heard learned counsel for the parties.

2. Petitioner is accused in connection with Naya Ramnagar P.S.Case No.166 of 2013 registered under Section 414 I.P.C. The prayer of the petitioner for discharge has been refused by the learned court below by order dated 29.04.2015. The said order is under challenge in this application under Section 482 Cr.P.C.

3. The challenge is on the ground that there is absolutely no material against the petitioner to proceed with the trial. Hence, the impugned order suffers from error of record and non-application of judicial mind.

4. According to FIR, the police apprehended co-accused-Nilesh Kumar on suspicion. Nilesh Kumar disclosed to the police that he is involved in business of stolen leaf of tea.



Nilesh Kumar further reported that 126 bags were brought on a truck and 100 bags out of that was sold and the remaining 26 bags are kept in the house of co-accused-Vicky. When the house of Vicky was raided, 21 bags of tea was seized on suspicion that they were stolen property. During investigation, two accused person confessed before the police wherein they stated that on one occasion this petitioner had telephonically asked to make payment of the tea, if the same have already been sold away because one Manoj Chaudhary is asking for money.

5. Learned counsel for the petitioner submits that during whole of the investigation, it did not surface that the seized tea bags were stolen property. Moreover, except confessional statement of the co-accused, no other material has come against the petitioner.

6. The impugned order reveals that the learned court below has recorded as follows:

“On perusal of case diary it appears that there is sufficient material in para-6 and 20 and also in other paras of case diary to frame charges against the petitioner under Sections 414/34 I.P.C.”



7. Contention is that para-6 and para-20 of case diary contains confessional statement of co-accused-Nilesh Kumar and Santosh Kumar, besides, that there is no other material against the petitioner and the learned court below has wrongly mentioned that other materials are also there. Contention is that the issue has been settled in a catena of decisions that though confession of the co-accused is relevant and admissible against the co-accused in view of the provisions of Section 30 of the Evidence Act. However, the confession 'as only material' cannot be taken for framing of the charges.

8. Learned counsel for the State-Opposite Party submits that at the stage of framing of charges, the court is to see whether a prima facie case or a prima facie strong suspicion is there against the accused or not. If prima facie material or strong suspicion is there, the court would be justified in asking the accused to face trial after framing of the charges. In the present case, sufficient material has surfaced in the confessional statement of co-accused. However, learned counsel for the State concedes that besides confessional statement, there is no other material disclosing involvement of the petitioner in the offence alleged.

9. Section 25 of the Evidence Act puts a bar on proof of confession made to a police officer. Likewise, Section 26



prohibits proof of confession made while in the custody of the police unless it is made in immediate presence of the Magistrate.

10. In the present case, the confessions were made by the co-accused in presence of police, while they were in police custody and not in presence of the Magistrate. Therefore, apparently, the confessions cannot be proved during trial. If that cannot be proved during trial, the same cannot be treated as evidence at the stage of charge. Identical issue was there before the Hon'ble Supreme Court in **Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Anr** disposed of on **24.04.2019** where there was no other material, save and except confessional statement of the co-accused, against the appellant before the Hon'ble Supreme Court and the Hon'ble Supreme Court quashed the order of charge against the appellant and observed as follows:

21. " At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in



the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral motions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence”.

11. In **Suresh Budharmal Kalani @ Pappu Kalani**

V. State of Maharashtra, reported in (1998)7 SCC 337, the



Hon'ble Supreme Court has taken the view that confession by a co-accused containing incriminating matter against a person could not by itself suffice to frame charge against the accused.

12. Considering the settled proposition aforesaid and lack of sufficient material against the petitioner to compel the petitioner to face trial, in my view, the prosecution of the petitioner would be an abuse of the process of the court. Hence, the impugned order so far it relates to the petitioner and the entire criminal proceeding against the petitioner stands quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.07.2019
Transmission Date	15.07.2019

