

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66217 of 2019

In
CRIMINAL REVISION No.200 of 2019

Arising Out of PS. Case No.-5 Year-2016 Thana- DHANAHA District- West Champaran

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ISHWAR KUSHWAHA S/O LATE BABULAL KUSHWAHA @ LATE
BABULAL MAHTO RESIDENT OF NADAWA, P.S. - CHAUTARWA,
DIST- WEST CHAMPARAN

... .. Petitioner/s

Versus

1. The State of Bihar
2. Abhyanandan Sharma Son of Ugramohan Sharma Resident of Village -
Amarpur, P.S.- Bihpur, District- Bhagalpur. At present - Asst. Manager,
S.B.I. Madhubani

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Arjun Prasad
For the Opposite Party/s : Mr.Anil Kumar

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 12-12-2019

Heard parties.

2. This application has been filed under Section 482 of Cr.P.C. for quashing the order dated 18.02.2019 passed by 1st Additional Sessions Judge, Bagha, West Champaran In S.T.R. No.271 of 2017/CIS No.3176/2017 arising out of Dhanaha P.S. Case No.05/2016 instituted for offences punishable under Sections 216, 412, 397 and 395 of Indian Penal Code by which the petition filed by the petitioner under Section 227 of Cr.P.C. for discharge has been rejected.

3. Prosecution case is based upon fardbyan of Abhya Nandan Sharma, Asst. Manager, S.B.I., Madhubani in which he



has alleged that on 18.1.2016 while he was returning to SBI Madhubani along with his security guard after collecting cash of Rs.20,00,000/-(Twenty Lacs) in his Bolero vehicle and in the way, one BOLERO Jeep upon which five unknown miscreants were sitting with arms intercepted their vehicle and overpowered them on strength of arms and looted cash of Rs.2000000/- and also injured the security guard of the vehicle.

4. On basis of aforesaid fardbyan, FIR was registered giving rise to Dhanaha P.S. Case No.05/2016 dated 18.1.2016 against unknown accused and during investigation petitioner was arrested and thereafter charge-sheet was submitted against him and other three accused and on the basis of charge-sheet and case diary, cognizance of offence under Sections 395, 397 was taken against petitioner and case was committed to the court of Sessions for trial.

5. From the records and perusal of case diary, it appears that during investigation, Bolero which was used by miscreants for looting the cash was left at place of occurrence as it developed snag and engine of said vehicle stopped and they fled away on two looted motorcycles with cash and from registration number of said Bolero, it was disclosed that same was looted vehicle against which Naurgiya P.S. Case No.4/16



was instituted against named accused Munna Kushwaha, Adhaya Kewat and one unknown and thereafter house of Munna Kushawaha and Adhya Kewat was raided but they were found absconding.

6. From the vehicle which was used in crime, driving licence and identity card of Bipin Singh was recovered and accordingly his house was raided but he was found absconding. Accused Sunil Yadav was also found involved in this crime and as such mobile number of Bipin Singh and Sunil Yadav was kept on surveillance. During investigation, name of Vijay Singh and Sunil Jayswal also surfaced in this case and their mobile was also kept on surveillance.

7. Involvement of petitioner was not found in the case till this stage in any manner.

8. Accused Vijay Singh was arrested on 24.1.2016 and on search of his house, rupees one lacs 10 thousand cash was recovered which was kept beneath his bed and his confessional statement was recorded by the police in paragraph no.64 of the case diary in which he has named co-accused Bipin Singh, Sunil Jayswal, Sunil Yadav and three unknown but did not name petitioner being involved in said crime.

9. Accused Adhya Nisad was arrested on 3.2.2016 by



police during vehicle checking and from his possession, arms and ammunition as well as looted cash of Rs.2,09,500/- was recovered and who confessed his guilt and his confession has been recorded in paragraph no.97 of case diary who has named co-accused Sunil Jayswal, Vijay Singh, Sunil Yadav, Bhola Mushar, Bipin Singh, Munna Kushwaha but not the petitioner.

10. Accused Bipin Singh house was raided however he was found absconding but from his house, number plate of bolero used in crime was recovered.

11. During supervision by higher authorities, it was observed in paragraph 128 of case diary that accusation against accused Vipin Singh, Vijay Singh, Adhya Nishad, Sunil Jayswal, Sunil Yadav, Bhola Mushar, Umesh Gaud were found to be true, however, no involvement of petitioner was found in said crime.

12. Name of petitioner has surfaced in this case for the first time when mobile set used by accused Sunil Yadav which was kept on surveillance and from said mobile set a new SIM having no.9570910292 was found active and when contacted by IO on said mobile set and mobile number, petitioner admitted that he was using said mobile set which was given to him by accused Sunil Yadav who is well known to him, and was



preparing for competitive examination with him but left preparation and had come to his residence on 19.01.2016 and stayed overnight and went away on 20.01.2016 on his bike and gave his mobile set to him which was being used by him by inserting his SIM card and same was traced by police and on search of his room, some certificate of co-accused Sunil Yadav was also recovered from his room and mobile set and certificates were seized and petitioner was apprehended in this case.

13. Accused Sunil Yadav surrendered before the trial court on 5.3.2016 and was taken on police remand and his statement was recorded by police in which he stated that he remained at the residence of petitioner from 7:00 p.m. on 19.1.16 to 8:00 a.m. next day but has not stated about any involvement of petitioner in crime committed by him along with other accomplice.

14. Police thereafter submitted charge-sheet on 22.4.16 against Vijay Singh, Sunil Yadav and Ishwar Kushwaha (petitioner) and kept supplementary investigation continued against Vipin Singh, Adhya Nishad, Sunil Jaiswal and Bhola Mushar, Umesh Gaund.

15. Discharge petition under Section 227 of Cr.P.C. was



filed by petitioner that there is no material or evidence found against him during entire investigation showing any complicity of petitioner in the alleged crime and on the basis of material placed before the court even suspicion cannot be raised against petitioner for being involved in crime as such he may be discharged as charges against him are groundless and no *prima facie* case is made out against him to put on trial.

16. On discharge petition filed by the petitioner prosecution submitted his reply stating therein that in paragraph no.137, it has come that petitioner was preparing for competitive examination after taking a room on rent from landlord Chandan Singh and police recovered a mobile hand set which was being used by petitioner by inserting his SIM no.9570910292 and copy of intermediate certificate of accused Sunil Yadav, his provisional certificate and migration certificate were recovered from the room of petitioner and in his reply of question put by IO which has been recorded in paragraph 138, accused Sunil Yadav has admitted that he stayed overnight in the room of petitioner which has been satisfactorily explained by the petitioner.

17. None of the accused who were arrested named petitioner as their accomplice, nothing has been recovered from



possession of petitioner and he has satisfactorily explained overnight stay of accused and the mobile set given by him which was being used by him and from materials available on record, there does not exist even a suspicion about his involvement in said crime. Even Sunil Yadav whose mobile set was found to be used by petitioner and who over night stayed there stated nothing about any involvement of petitioner in said crime or he had any knowledge about said crime committed by Sunil Yadav. Accused Sunil Yadav was friend of petitioner and earlier both used to study together and prepare for competitive examination as such his overnight stay in the room of petitioner is not unnatural or unusual and same cannot connect petitioner with said crime. Except material as disclosed in paragraphs 137, 138 there is no any other incriminating material against petitioner.

18. It has lastly been submitted that petitioner has been selected on the post of FITTER in eastern railway which he has achieved after much labour and preparation and his all efforts to secure a job will be frustrated if criminal proceeding is allowed to be continued in which there is no material against petitioner to implicate him in said crime. Petitioner has no criminal antecedent.



19. The Apex Court in *Amit Kapoor Versus Ramesh Chander* and another since reported in (2012) 9 Supreme Court Cases 460 has held in paragraph nos.17 and 19 which are as follow:-

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.

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39(SCC



pp. 41-42, para 4):

20. The Apex Court in Union of India Versus Prafulla Kumar Samal and another since reported in (1979)³ Supreme Court Cases ⁴ has held in paragraph no.10 as follows:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 evidence 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 evidence as if he was conducting a trial.”

21. For the reasons as stated above and in order to meet the ends of justice, the order dated 18.02.2019 passed by 1st Additional Sessions Judge, Bagha, West Champaran In S.T.R. No.271 of 2017/CIS No.3176/2017 arising out of Dhanaha P.S. Case



No.05/2016 is not sustainable either in law or on facts and accordingly is set aside and discharge petition filed by petitioner is allowed.

22. Criminal miscellaneous petition is allowed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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