

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2319 of 2019

Arising Out of PS. Case No.-23 Year-2018 Thana- AURAI District- Muzaffarpur

Md. Aziz Ahmad aged 69 years (Male) son of Ataur Rahman Resident of Village-Chainpur, P.S. Aurai, District, Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar
2. Madan Rai son of Ramsakal Rai, Resident of Village-Chainpur, P.S Aurai District Muzaffarpur.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr.Vindhya Keshari Singh, Sr. Adv.
For the Opposite Parties	:	Mr.Ajit Kumar, APP
For the Informant	:	Mr. Ravi Ranjan

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
C.A.V. ORDER

Date : 21-01-2020

This application has been filed for quashing of order dated 2.11.2018 passed by the Addl. Sessions Judge, Muzaffarpur in Sessions Trial No.414 of 2018 (arising out of Orari P.S.Case No.23 of 2018) whereby and whereunder a petition for discharge under Section 227 of the Code of Criminal Procedure Code (hereinafter to be referred as 'the Cr.P.C.') has been rejected.

2. Prosecution case as per the written report filed by the informant Madan Rai is that his son aged about 13 years was taken by Mukul Rai on 19.2.2018 but he did not return then he started searching him but he could not trace out him and on 20.2.2018 the informant met with accused Mukesh Kumar and he disclosed that he had given one packet of toddy to give it to Md. Sabbir and on



this the informant went to the house of Md. Sabbir but there the house of Md. Sabbir was found locked and when he made a contact with Md.Sabbir on Mobile and he tried to enquire about his son, Md. Sabbir switched off his Mobile and on the basis of above written report, Orai P.S.Case No.23 of 2018 was registered against accused Md. Sabbir and Mukesh Kumar.

3. It appears that during the investigation, name of the petitioner transpired and as such the police after investigation submitted charge-sheet against the FIR named accused persons as well as this petitioner and one Md. Shahnawaj and after cognizance the case was referred to the court of Sessions, which ultimately came to the court of the learned 14th Addl. Sessions Judge, Muzaffarpur.

4. It further appears from perusal of the record that a petition under Section 227 of the Cr.P.C. was filed by the petitioner before the learned trial court on the ground except confessional statement there is nothing against him and the confessional statement is not admissible under Section 25 of the Indian Evidence Act (hereinafter to be referred as 'the Evidence Act'). The learned Addl. Sessions Judge after hearing both the parties , vide order dated 2.11.2018 rejected the above petition filed by the petitioner against him the present case has been filed.



5. Grounds for quashing of the impugned order as per the averments made in the petition as well as submissions made by the learned Senior Counsel, Mr. Vindhya Keshari Singh, is that except confessional Statement, there is nothing against him and the confessional statement is not admissible under Section 25 of the Indian Evidence Act. It is also submitted that though it is alleged that the petitioner and one Md. Shahnawaj were carrying something in the plastic bag towards River where the dead body was found but the plastic has not been seized by the Police nor was it recovered, as such there is absolutely no legal evidence against the petitioner, hence continuation of the proceeding without any legal evidence will not serve any purpose and continuing of proceeding against the petitioner will only be an abuse of the process of the court. Learned counsel for the petitioner has also relied on decisions of the Hon'ble Apex Court in the case of ***Suresh Budharmal Kalani*** reported in ***AIR 1998 SC 3258***, judgement of Karnataka High Court in the case of ***Kumar @ Narayana*** reported in ***2005 Criminal Law Journal 4829*** as well as the Single Judge Bench decision of this Court in the case of ***Naresh Yadav and Anr . reported in 1997 BBCJ 369.***

6. Heard learned counsel for the O.P.no.2, who has opposed this application for quashing on the ground that there are



materials available in the case diary as during investigation; two witnesses in Para Nos.64 and 65 have stated that while they were returning after attending call of nature in early morning, they saw the petitioner and one Shahnawaj (both are uncle and nephew) carrying something in the plastic bag towards Kotha Chowr and at 10 O'clock in the morning there was a *hulla* that a dead-body was thrown in the Kotha Chowr and para 56 of the case diary discloses that dead-body was found. It is further submitted that the case diary further shows that the deceased was taken by co-accused Mukesh Kumar who sent him to the co-accused Md. Sabbir and it also shows that blood stained *Lungi* and blood stained mark at *Chowki* were found in the house of Md. Sabbir. Apart from that there is confessional statement of Shahnawaj, in which he has disclosed about his involvement as well as involvement of the other co-accused in the murder of the son of the informant and he further discloses that they killed the deceased on the *Chowki* in the house of Md. Sabbir and as Md. Sabbir was later arrested, they decided to throw the dead body in the river, as such there are sufficient *prima facie* evidence available against the petitioner, hence the learned trial court has rightly rejected the application under Section 227 of the Cr.P.C. filed by the petitioner in this case.



7. Having heard both sides and perused the record as well as the case diary. From perusal of the case diary it appears that there is allegation as stated above that the son of the informant was taken by co-accused Mukesh Kumar and on inquiry Mukesh Kumar informed that he had sent his son to Md. Sabbir and when the informant went to the house of Md. Sabbir, it was closed and when he tried to contact on mobile with him he found that Md. Sabbir had switched off his mobile. It further appears that from the house of Md. Sabbir one blood stained *Lungi* was recovered and from the house of Mukul Rai, one blood stained under-paint was found and both were seized and the seizure list was prepared. It further appears that Md. Sabbir was arrested on 22.2.2018 and Mukesh Kumar was also arrested on the same day and thereafter on 22.2.2018 itself police got information of throwing of the dead body in the Sareh of Chainpur, which was identified by the informant as of his son.

8. Para 63 and 64 of the case diary discloses that statement of one Kishori Ram and Ram Babu Ram were recorded under Section 161 of the Cr.P.C., who disclosed that while they were returning from attending the call of the nature in the morning from the side of Kotha Chowr towards their village they saw the petitioner and one Shahnawaj were carrying some articles in the



black plastic bag and going towards Kotha Chowr and at about 10 O'clock there was *hulla* that a dead-body was found, as such they claim that the petitioner and Shahnawj has thrown the dead body in Kotha Chowr. Apart from the above, Police has also found blood stained mark on the Chowki in the house of Md. Sabbir, which appears from para 72. Para 79 discloses that the accused Shahnawaj was arrested and he confessed his guilt and made a confessional statement that discloses that the petitioner and co-accused Sabbir Ahmad & Shahnawaj have killed the deceased by keeping him on the Chowki and co-accused Mukesh Kumar was watching outside the house so that nobody would come. As per the confessional statement, motive is that accused Md. Sabbir has taken Rs.08 lac from the father of the deceased i.e. informant and one more person for sale of a piece of land and thereafter as Md. Sabbir could not execute sale deed, there was altercation between them. Confessional statement of the co-accused Shahnawaj also discloses that Md. Sabbir and Mukesh Kumar were arrested and due to fear they had taken the dead body in order to throw it in the river but as some persons were coming, they threw the dead body and hid themselves in the wheat field. Apart from that there is also self-inculpatory statement of Md. Shahnawaj showing



involvement of all the accused persons including Md. Shahnawaj and the petitioner.

9. So far judgement in the case of ***Suresh Budharmal Kalani*** (supra), it appears that in para 10 of the judgement, the Hon'ble Apex Court has held that in that case statement was self-exculpatory statement, hence inadmissible in evidence as 'confession' and accordingly framing of charge has been set aside by Hon'ble Supreme Court.

10. So far another judgement in the case of ***Naresh Yadav and Anr*** .(supra) of this Court is concerned, in that case on perusal of the same, it appears that confession has been made by co-accused before the Magistrate under Section 164 Cr.P.C. but later on he filed a petition stating that the police had threatened them for confessional statement that the confessional statement was not true as such in that case there was retracted statement. So far judgement of the Karnataka High Court in the case of ***Kumar @ Narayana*** (supra) is concerned that is against the conviction, as such the same is not applicable in the present case.

11. As discussed above so far present case is concerned, there are evidence available on the record as discussed above, the witnesses had seen the petitioner and other accused carrying something in plastic bag in early morning hour towards *Chowr* and



on same day at 10 O'clock dead body was recovered from *Chowr* (*Sareh*) that discloses a strong circumstance against the petitioner. Apart from that blood stained *Lungi*, undergarment and blood mark was found on *Chowki* in the house of Md. Sabbir and all the above facts got corroboration from statement which is inculpatory in nature of accused Shehnawaj.

12. It is well settled that at the time of framing of the charge, the learned trial court has to see whether there are any *prima facie* evidence against the accused persons or not and the trial court does not have to meticulously examine the same rather it can be done at the time of trial.

13. Considering discussions made above, there are *prima facie* materials against the petitioner. As such I find no merit in this application.

14. Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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