

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1841 of 2020

Arising Out of PS. Case No.-840 Year-2016 Thana- BIHTA District- Patna

SONU KUMAR S/o- Umesh Kumar Nirala @ Umesh Rai Resident of
Village- Sarkuna, P.S.- Dulhin Bazar, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ritesh Kumar, Advocate

For the Opposite Party/s : Mr.Jharkhandi Upadhyay,APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 19-05-2022 This application has been filed for quashing of order dated 04.12.2019 passed by learned Addl. District & Sessions Judge - VII, Danapur (Patna) in Sessions Trial No. 230A of 2017 / Reg. No. 969 of 2017 (arising out of Bihta P.S. Case No. 840 of 2016). By the said order, the learned Addl. Sessions Judge has rejected the petition filed on behalf of petitioner under Section 227 of the Cr.P.C.

The prosecution case, in brief, is that on 31.10.2016 at 10:00 AM, while the informant reached near Doghra village, he saw that petitioner alongwith other co-accused persons were abusing Bajrangi Yadav and when the uncle of informant Ashwani Kumar @ Bablu Kumar tried to pacify them, co-accused Shashi Bhushan Yadav @ Holi Yadav fired from his pistol upon the uncle of informant namely Ashwani Kumar @ Bablu Kumar, as a result of which, he fell down and died. It is further alleged that all the



accused thereafter fled away after making fire in air.

Learned counsel for the petitioner submits that the petitioner has assailed the impugned order on the ground that the police, after investigation, submitted chargesheet against co-accused Shashi Bhushan Yadav and investigation was kept pending in respect of petitioner and other co-accused Krishna Yadav. Thereafter, Police submitted final form and this petitioner and co-accused Krishna Yadav were not sent up for trial, however; learned A.C.J.M., differing with the same, took cognizance against petitioner also on 05.01.2018 without assigning any reason. It is next submitted that at the time of alleged occurrence, this petitioner was not present at the place of occurrence and as such, the order of cognizance is bad and illegal. Similarly, the learned Addl. Sessions Judge, without referring to the submission made on behalf of the petitioner or assigning any reason in a very cryptic manner, has rejected the petition on 04.12.2019 filed on behalf of petitioner under Section 227 of the Cr.P.C.

However, learned A.P.P. for the State opposed the petition and submitted that the case is at the stage of charge.

It is settled law that the report submitted by the police is not binding upon the Court and the Court can differ with the



final report on the basis of materials collected during course of investigation.

At the stage of framing of the charge, the learned Court below has to shift 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. At this stage, the Court is not required to go into the merit of the case. In the instant case, the petitioner has prayed for quashing of the impugned order on the ground that at the time of alleged occurrence, he was not present at the place of occurrence, which cannot be looked into at the stage of framing of the charge. It is a matter of trial.

In this connection, a reference may be made of a decision of Hon'ble Apex Court, reported in **(2010) 9 S.C.C. 368 (Sajjan Kumar vs. C.B.I.)**, wherein in paragraph - 21, the Hon'ble Apex Court has observed as under:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The court 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, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of [Sections 227](#) and [228](#), the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."



Considering the aforesaid facts and circumstances as well as law laid down by the Hon’ble Apex Court, this Court does not find any error in the order impugned and as such, the petition stands dismissed.

(Prabhat Kumar Singh, J.)

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