

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 74462 of 2019

Arising Out of PS. Case No.-440 Year-1994 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

=====

SHAILESH KUMAR SINGH (RTD.I.P.S.) Son of Late Parshuram Singh
Resident of Mohalla - Vijay Nagar, P.O. - B.V. College, P.S.- Rupaspur, Distt -
Patna - 800014

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Bhagwan Prasad Gupta, The then Superintendent, Special Central Jail
Bhagalpur P.S.- Kotwali Distt - Bhagalpur, Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Abhishek

For the Opposite Party/s : Mr.Shyam Kumar Singh

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 25-04-2023 Heard Shri Rajesh Kumar Singh, learned Senior

counsel for the petitioner and Shri Shyam Kumar Singh, learned

APP for the State.

This application has been filed for quashing the order
dated 03.08.2019 passed by learned Additional District and
Sessions Judge, Bhagalpur in connection with S.Tr. No. 548 of
2018 arising out of Kotwali (Barari) P.S. Case No. 440 of 1994
registered for the offence under Sections 304 of the Indian Penal
Code.

That prosecution story of the present First Information
Report is based the basis of a letter written by Superintendent
Special Central Jail, Bhagalpur addressed to the District



Magistrate, Bhagalpur stating therein that Rajendra Mandal was brought to jail in Judicial custody in connection with Jagdishpur P.S. Case No. 130 of 1994 . In custody Rajendra Mandal complained of pain in both legs. Accordingly, at the time of entering in the jail he was treated by the jail doctor namely Bijay Kumar Mandal and on his advice he was admitted in Jail hospital and during the course of treatment he died and on the basis of the report of the Jail Superintendent a U.D. Case No-3 of 1994 was instituted.

It has been submitted by the learned counsel for the petitioner that in the year 1994 the petitioner was posted as Deputy Superintendent of Police (Law and Order) Bhagalpur and on 24.07.1994 he went to the village Gangati along with the Investigating Officer of Jagdishpur PS. Case No. 118 of 1994 only for the of the case.

In the supervision the raid was conducted for arresting the named accused Surendra Mandal @ Sullo Mandal who is the brother of Rajendra Mandal (deceased). After seeing the police team Surendra Mandal fled away and during the course of search of the house, one country made Pistol was recovered from the possession of Rajendra Mandal.

It is further submitted that on the basis of aforesaid



recovery of illegal arms a case bearing Jagdishpur P.S. case No. 130 of 1994 was registered Under Section 25-1B/26/35 of the Arms Act against Rajendra Mandal @ Sullo Mandal and Shankar Mandal and after that a seizure list was also prepared in presence of the witnesses. Thereafter, Rajendra Mandal and Shankar Mandal were arrested on 24.07.1994 and they were produced before the learned Chief Judicial Magistrate, Bhagalpur on 25-07-1994 who found some swelling on their leg and remanded to Judicial custody on 25.07.1994 till 08.08.1994.

During the course of treatment he died in the Jail hospital on 28.07.1994 and the petitioner has no role to play with regard to the proper treatment of the deceased and as such accusation against him is without any sound evidence.

During the course of investigation no material has been collected by the police suggesting any involvement of the petitioner in the alleged occurrence. He being the Supervising Officer of the Jagdishpur P.S. Case No. 118 of 1994 at the relevant time conducted the raid for arrest of notorious criminal Sullo Mandal.

It is also submitted that after recovery of illegal arms, the deceased was arrested along with Shankar Mandal and a case was registered under the arms act and accused was brought



to the concerned police station, thereafter petitioner left the police station. On 25.04.1994 i.e. on next day of the arrest of the accused persons they were produced before the Court from where the accused persons were remanded to Judicial custody.

Learned counsel for the petitioner also submits that Rajendra Mandal (deceased) had not made any complaint regarding ill treatment by the police before the Chief Judicial Magistrate and only some swelling was found on his leg. In the jail hospital when he was being treated, the injury was found to be simple but unfortunately after 3 days he died in the jail hospital.

Learned counsel for the petitioner submits that the petitioner is a retired I.P.S. officer and has been falsely made accused in the present case without there being any material having surfaced against him during investigation.

Learned counsel for the petitioner also submits that the case was further being investigated by the CID and in Paragraph 171 it has come that there is no material against the petitioner, still thereafter the police submitted charge-sheet on 08.03.2007 without any evidence against the petitioner and without any further investigation made with regard to Paragraph 171.



Learned counsel for the petitioner further submits that a discharge application has been filed in the Court below and the same has been rejected without considering the materials available on record and in a mechanical manner by a cryptic order and the trial Court has acted as a mere post-office.

Heard Shri Shyam Kumar Singh, learned APP for the State. He has gone through the case diary and has submitted that in the case diary, it has come that the petitioner being the Dy. S.P. had ordered for assault of the deceased by the police officials.

The learned counsel for the petitioner, in his reply on the above statement of the learned APP for the State has submitted that the FIR was registered much before and the statement in the case diary was recorded after more than two years and two months of the occurrence.

I have heard the submission of both the parties.

The Hon'ble Supreme Court in the case ***Kanchan Kumar Vs. State of Bihar 2022 9 SCC 577*** has held in Paragraph 12 to Paragraph 15 as follows:-

12. Legal provision and precedents: [Section 227](#) of the Cr.P.C relating to discharge is as under:-

*“227. **Discharge** — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the*



prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.” 8 (1979) 3 SCC 4.

13. *The threshold of scrutiny required to adjudicate an application under [Section 227](#) of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In Prafulla Kumar Samal (supra), it was noted that:*

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

(i) 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.

(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 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.

(iv) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 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.”

14. *In [Sajjan Kumar v. Central Bureau of Investigation](#)¹⁰, the Court cautioned against accepting every document*



produced by the prosecution on face value, and noted that it was important to sift the evidence produced before the Court. It observed that:

“21. On consideration of the authorities about the scope of [Sections 227](#) and [228](#) of the Code, the following principles emerge:-

(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.”

15. Summarising the principles on discharge under [Section 227](#) of the Cr.P.C, in [Dipakbhai Jagdishchandra Patel v. State of Gujarat](#), 11 this Court recapitulated:

“xxiii. 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 the evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the 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."

From the law laid down by the Hon'ble Supreme Court in the case of ***Kanchan Kumar Vs. State of Bihar 2022 9 SCC 577***, it is clear that the Court has to apply its mind at the stage of framing of charge if a discharge application is filed and the trial Court should not act a mere post-office. The Court has to see the materials which has come during investigation and come to a conclusion as to whether the materials are there to make out a case against the accused. There should be a strong suspicion and the suspicion must be founded on some materials and the materials must be such that it can be converted into evidence during trial. Let the Court come to a prima facie finding that the petitioner has committed the offence.

The only material which is available against the petitioner is the statement of a witness which is recorded after two years and two months after the date of occurrence.

Moreover, the petitioner is not named in the FIR and during investigation the Investigating Officer did not find any material to connect the petitioner, even remotely with the alleged crime and the deceased, when produced to the learned



Magistrate has not made any complaint against the petitioner or any other accused person and has not made any complaint of assault by any of the police officials. Therefore, the prosecution of the petitioner, in the opinion of this Court is not based on material and case for framing of charge against the petitioner is not made out and there is no prima facie case which warrants the trial of the petitioner.

In view of the above-mentioned facts, this application is allowed.

Accordingly, the order dated 03.08.2019 passed by learned Additional District and Sessions Judge, Bhagalpur in connection with S.Tr. No. 548 of 2018 arising out of Kotwali (Barari) P.S. Case No. 440 of 1994 and all the consequential proceedings arising out of the aforesaid case are hereby quashed.

(Sandeep Kumar, J)

Vikas/-

U		T	
---	--	---	--

