

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11698 of 2022

Arising Out of PS. Case No.-175 Year-2021 Thana- BAIKUNTHPUR District- Gopalganj

Rohit Sah @ Navlesh Sah Son of Sunil Sah @ Sunny Lal Sah Resident of Gamhari, P.S. - Baikunthpur, District - Gopalganj. At present Resident of 130, Vaishno Vihar, Raipur, Dehradun, Uttarakhand.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ramesh Singh Son of Late Jangal Singh Resident of Gamhari, P.S. - Baikunthpur, District - Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Naresh Chandra Verma
For the Opposite Party/s : Mr.Narendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 25-04-2024 This application has been filed against order dated 29.09.2021, passed by learned Sessions Judge, Gopalganj in Sessions Trial No. 312 of 2021, arising out of Baikunthpur P.S. Case No. 175 of 2021, by which learned Sessions Judge has framed charges against petitioner for offences punishable under Sections 302 / 34 of the Indian Penal Code.

2. As per the prosecution case, on 10.06.2021, a Baraat party had come in the marriage of daughter of Baijnath Sah and stayed in Middle School of the village, in which obscene song was being played, then son of informant came there and forbade them from playing obscene song whereupon the accused persons including this petitioner started assaulting



him and co-accused Shailesh Sah gave knife blow on the buttock of informant's son. Thereafter, informant took his son to Sadar Hospital, Gopalganj where he was referred to Gorakhpur, but on way to hospital, the son of informant died.

3. Thereafter, on the same date, a F.I.R., vide Baikunthpur P.S. Case No. 175 of 2021 was lodged against petitioner and other six co-accused persons under Sections 302/34 of the Indian Penal Code. Police after investigation submitted charge sheet against the accused persons including this petitioner and case was committed to the court of Sessions and thereafter, vide impugned order dated 29.09.2021, the learned Sessions Judge has framed charge against this petitioner, which is under-challenge.

4. Learned counsel for the petitioner submits that as per F.I.R. itself, specific accusation of giving knife blow is against co-accused Shailesh Sah. So far as this petitioner is concerned, there is general and omnibus allegation and no specific overt act has been alleged against him. As a matter of fact, petitioner was not present at the place of occurrence, rather he was at Dehradun with his family members at the relevant time, but due to village politics, he has been falsely implicated in this case. In the *post-mortem* report, only one injury of



stabbing has been found on the body of deceased, which was caused by co-accused, not this petitioner, but the learned Sessions Judge, in a mechanical manner, has framed charge against this petitioner, which requires to be set-aside by this Hon'ble Court.

5. However, learned A.P.P. for the State vehemently opposes the submission advanced on behalf of petitioner and submits that on perusal of the charge sheet and the evidence available therein, if the court of a Magistrate or the Sessions Court is satisfied that *prima facie* case is made out against the accused persons, the court can frame charge against the accused person(s). He submits that even the court has suspicion or the doubt with respect to implication of the accused persons in commission of offence, it can order for framing of charge. Hence, there is no illegality or irregularity in the impugned order and as such, this quashing petition is fit to be dismissed.

6. Heard learned counsel for the parties and perused the materials available on record.

7. It is well settled that at the time of framing of charge, learned court below is mainly concerned with the allegations made in the FIR as well as the charge sheet and materials collected by the police during investigation and



evidence led in support of the same in order to find out as to whether there is sufficient materials for proceeding against the accused persons. Learned court below is not required to examine the merits and demerits of the case and whether the materials collected is adequate for supporting conviction and even on a little doubt, it can proceed for framing of charge against the accused persons. More so, the plea of *alibi*, taken by the petitioner, for assailing the impugned order falls in the realm of defence which cannot be looked into at this stage. In this regard, reliance is placed on a reportable judgement of the Hon'ble Supreme Court, in case of the **State of Gujarat vs Dilipsinh Kishorsinh Rao**, passed in **Criminal Appeal No.2504 of 2023**. In this judgement, Hon'ble Supreme Court has held that the primary consideration, at the stage of framing of charge, is the test of existence of a *prima-facie* case, and at this stage, the probative value of materials on record need not be gone into. It is also held that at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial. The plea



or the defence, when requiring to be proved during course of trial, is itself sufficient for framing the charge.

8. In view of the aforesaid facts and circumstances of the case and law pronounced by the Hon’ble Supreme Court, this Court does not find any illegality in the order dated 29.09.2021, passed by learned Sessions Judge, Gopalganj in Sessions Trial No. 312 of 2021, arising out of Baikunthpur P.S. Case No. 175 of 2021.

9. Accordingly, this petition is dismissed.

(Prabhat Kumar Singh, J)

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