

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.423 of 2019

Arising Out of PS. Case No.-8 Year-2018 Thana- KAKO District- Jehanabad

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Baljeet Kumar Sahsi @ Pintu Kumar @ Pintu S/o Yadubir Prasad R/o village-
Mai, Nauru, P.S.- Kako, District- Jahanabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Shama Sinha, Advocate Mr. Saurav Kumar Suman, Advocate Ms. Shreya, Advocate Ms. Asmita, Advocate
For the Respondent/s	:	Mr. Pawan Kumar Chaurasia, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 13-02-2024 Heard learned advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is facing trial under the charge of section 115 and 120B of the I.P.C. and Section 25(1-b)a, 26, 35 of the Arms Act. Kako Bhelawar P.S. Case No.08 of 2018 was registered, on the basis of suo-moto complaint filed by the police officer stating the following facts :

That on 13.01.2018 at about 6:35 A.M. police received a secret information to the effect that the some miscreants assembled in the house of one Baljeet Kumar Sahsi @ Pintu Kumar in order to hatch a conspiracy to commit murder of a person and they had sufficient arms and ammunition in their



possession. The police officer along with other members of police force conducted a raid in the house of the petitioner and arrested Baljeet Kumar Sahsi @ Pintu Kumar and Mukesh Kumar from the said house. On search, a fire arm loaded with . 315 ammunition was recovered from the possession of accused Mukesh Kumar, the police officer who was the leader of the raiding party lodged a suo-moto complaint in the local police station and on the basis of his complaint, a case under Section 115/120B of the I.P.C. and Section 25(1-b)a, 26 and 35 of the Arms Act was registered.

Investigation of the case ended with submission of charge sheet under the above mentioned provision, the petitioner filed an application under Section 228(1)(a) alleging inter-alia that during investigation, the Investigating Officer failed to collect any materials under Section 115/120B of the I.P.C. to the effect that the petitioner along with other accused persons were abetting commission commitment of offence punishable with death or imprisonment for life and criminal conspiracy. Therefore, the case is not exclusively triable by the Court of Sessions and the case may be remitted back to the Court of the learned Magistrate for trial. The said application was rejected by the Trial Court on the ground that accused Baljeet Kumar Sahsi



@ Pintu Kumar made a statement before the police during investigation that he engaged two persons namely, Deepu and Mukesh who was also arrested to commit murder of one Bateshwar Yadav and for this purpose it was agreed by and between them that the petitioner would pay a sum of Rs.2,00,000/- to other two accused persons and out of the said two lacs an advance payment of Rs.20,000/- was made.

3. It is submitted by the learned advocate for the petitioner that the Trial Court failed to consider that a confessional statement made by an accused before police is inadmissible except under the circumstances contained in Section 27 of the Evidence Act. In the instant case, the Investigating Officer did not make any endeavour to find out the said Bateshwar Yadav for whose murder contract killers were engaged as per the statement of the petitioner. It is also submitted by the learned advocate for the petitioner that even the Investigating Officer could not recover the advance money paid to accused Deepu and Mukesh to bring the relevant part of the statement of the petitioner within the fold of Section 27 of the Arms Act. There is absolutely no evidence in the case diary of offence under Section 120B of the I.P.C. against the petitioner. In the absence of such evidence, no charge can be



framed against the petitioner and other accused persons under Section 115 and 120B of the I.P.C.

4. The learned advocate for the petitioner refers to the following judgment of the Hon'ble Supreme Court in support of her arguments :

(i) Sanjay Kumar Rai Vs. State of U.P. & Anr. (Criminal Appeal No.472 of 2021, decided on 07.05.2021).

(ii) Vikramjit Kakati Vs. State of Assam (Criminal Appeal No.1140 of 2020, decided on 04.08.2022).

(iii) Kanchan Kumar Vs. State of Bihar (Criminal Appeal No.1562 of 2022, decided on 14.09.2022).

5. In Sanjay Kumar Rai (supra), the Hon'ble Supreme Court held that while considering the discharge application, the Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect; the Court has to consider other probabilities; total effect of evidence and documents produce and the basic infirmities appearing in the case and so on. If it is found that the court has not gone into the merits of the case and did not analyze the case in light of the settled law, there will be no other alternative but to hold that the Court has committed jurisdictional error.

6. In Vikramjit Kakati (supra), the Hon'ble Supreme



Court relying on the decisions of *P. Vijayan Vs. State of Kerala & Another* and *M.E. Shivalingamurthy Vs. Central Bureau of Investigation, Bangaluru* was pleased to observe that in order to frame charge of conspiracy, it is required for the Court to see that some evidence had emerged or the prosecution had brought on records all prima-facie material whereby the accused persons had prior meeting of mind to execute the alleged offence in the given facts and circumstance, there is no justification for the appellant to undergone the agony of facing trial to which the appellant is not even prima-facie connected. Finally it was held by the Hon'ble Supreme Court that where there is no iota of evidence which in any manner connects the accused with the commission of crime, neither the Trial Court, nor the High Court were justified in framing charge of criminal conspiracy.

7. In Kanchan Kumar, the same principles has been laid down while summarizing, the principle on discharge under Section 227 of the Cr.P.C. The Hon'ble Supreme Court relied on the observation made in Deepakbhai Jagdishchandra Patel Vs. State of Gujrat which runs thus :-

“15. It is the case of the State that the appellant had knowledge that the notes were counterfeit and fake notes and was in conscious possession of the fake notes for 15 days. For



framing charges, what is required is prima facie satisfaction. Offence relating to counterfeit notes is a grave offence and not to be viewed lightly.”

8. The learned A.P.P. for the State on the other hand submits that the evidence on record is sufficient that the police received a source information that in the house of the petitioner two miscreants came with arms and ammunitions to commit murder of one Bateshwar Yadav, police conducted raid and arrested the petitioner and one Mukesh, while another accused Deepu fled away. It is pointed out by the learned A.P.P. for the State that police recovered a fire arm from the bed of the present petition which was concealed under a pillow. Police also recovered two mobile phones from the said bed. There was ample material that three accused persons were engaged in criminal conspiracy to commit murder of one Bateshwar Yadav.

9. I have heard the learned counsels for the parties.

10. I have also referred the facts on which the case under Section 115 and 120B of the I.P.C. and Section 25(1-b)a, 26, 35 of the Arms Act was initiated. On careful perusal of the case diary, this Court does not find that the Investigating Officer made some attempt to find out the said Bateshwar Yadav for whose commission of murder, the accused persons allegedly



conspired. There is absolutely no evidence that the accused persons intentionally aided the commission of any crime. The Investigating Officer failed to collect C.D.R. of mobile phones of the petitioner and another accused persons to prove that there was several talks between them to commit the offence of murder. In other words, the ingredients of offence under Section 107 of the I.P.C. and the evidence thereof was not even collected by the Investigating Officer.

11. In well celebrated decision of *State of Haryana Vs. Bhajan Lal* case reported in *1992 SCC Supl. (1) 335*, the Hon'ble Supreme Court laid down the following guidelines in which F.I.R./complaint can be quashed :-

- “(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any



offence and make out a case against the accused.

- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with malafides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. Thus, an F.I.R. can be quashed where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.



13. In Deepakbhai Jagdishchandra Patel Vs. State of Gujrat reported in (2019) 16 SCC 457 it is observed by the Hon'ble Supreme Court that at the stage of framing of charge in accordance with the principals 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. All that is required is the Court must be satisfied that with the material available, a case is made out for the accused to stand trial. In the instant case, the learned Additional Sessions Judge failed to consider, if there is any material of abatement to commit murder of one Bateshwar Yadav. Even the existence of said Bateshwar Yadav could not be ascertained. The prosecution failed to produce any material that there was conspiracy between the accused persons for commission of offence of murder of one Bateshwar Yadav. Last but not the least, alleged confessional statement made by the petitioner before the Investigating Officer is not admissible in evidence and thus, this is no evidence at all. The Court cannot rely such statement during framing of charge.

14. In view of the above discussion, this Court has no



other alternative but to hold that the learned Additional Session Judge-5th, Jehanabad committed jurisdictional error in framing charge against accused Baljeet Kumar Sahsi @ Pintu Kumar under Section 115/120B of the I.P.C. Therefore, the petitioner is discharge from the charge under Section 115/120B of the I.P.C.

15. Since, the offence under Section 25(1-b)a, 26, 35 of the Arms Act is exclusively trouble by the Court of the learned Magistrate, the learned Additional Sessions Judge is directed to remitted the case back to the Court of the learned Magistrate for Trial.

16. The instant revision is accordingly, allowed on contest.

(Bibek Chaudhuri, J)

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