

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32107 of 2023

Arising Out of PS. Case No.-651 Year-2022 Thana- JAKKANPUR District- Patna

Kallappa Siddappa Kudavakkalagi @ Kallappa Kudava Kalagi, son of SI DD Dava Kudappa Kalagi, Resident of 1011, Ledparkold, Danapur Station Road, P.S- Khagaul District- Patna.

Permanent Resident of C-804, Pebbles, D.S. K Ranwara Road, Suryadutt College, Patil Nagar, P.S.- Wagholi, District- Pune (Maharashtra)

... .. Petitioner

Versus

1. The State of Bihar.
2. Amit Kumar Son Of Madan Prasad Agarawal, Resident of Village-Karbigahiya Kali Mandir, P.S.- Jakkanpur, Dist.- Patna

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Ansul, Advocate Mr. Anuj Kumar, Advocate
For the State	:	Mr. Binod Kumar, APP
For the Opp. Party No.2	:	Mr. Dilip Kumar Sinha, Advocate Mr. Naresh Mohan Pandey, Advocate Mr. Vikash Kumar Nigam, Advocate Mr. Ganesh Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 30-10-2024

Heard learned counsel for the petitioner, learned APP for the State and learned counsel for the opposite party no.2.

2. This application has been filed against the order dated 25.04.2023 passed by learned Additional Sessions Judge, XXI, Patna in S.T. No.329 of 2023, by which the learned Judge has rejected the discharge application filed by the petitioner under section 227 of the Criminal Procedure Code.



3. The prosecution case is that on 18.11.2022 at about 14:30 hrs. the informant recorded his *fardbeyan* before the police stating therein that on 18.11.2022 at 01:30 Hrs. while his brother Rahul Kumar was at his shop at Karbigahiya, the proprietor of Britannia Biscuit Company namely, Bunty Kumar came there, whose go-down was at Beur, along with his salesmen Ritu, Kallappa Kudavakalagi (Petitioner), Keshav Raj and 4-5 unknown persons and asked him to purchase his company's biscuits from them and to sell the same. However, the informant's brother denied the same, upon which, Bunty Kumar and Ritu Raj fired upon his brother. On hearing the sound of firing, local people gathered there, caught three of the accused persons and assaulted them and in the meantime, local police came there and caught the accused persons. Thereafter, the informant brought his brother at PMCH, where the doctor declared him dead.

4. Learned counsel for petitioner submits that the co-accused Bunty Kumar and Ritu Raj are alleged to have fired upon the deceased and the petitioner was alleged to be with them. There is no specific allegation against the petitioner of any overt act, he is merely alleged to be present at the place of occurrence. He further submits that the petitioner is the



Regional Sales Manager- Central Region (Bihar, Jharkhand, Madhya Pradesh and Chattisgarh) of the Britannia Industries Limited and he came to the shop of the informant on regular market visit.

5. Learned counsel for the petitioner also submits that the police have recorded the confessional statement of co-accused persons namely, Keshav Raj, Ritu Raj Singh and Gaurav Kumar @ Priyanshu Priyadarshi and in their statements they have referred only to the innocuous presence of the petitioner at the place of occurrence but the informant has a different version, he says that Bunty Kumar and Ritu Raj fired, which shows that informant is not an eye-witness to the occurrence. Further, during investigation the Police have not found/recovered any material to corroborate the implication of the petitioner in the present case. Thus, the aforesaid confessional statements of co-accused does not lead to Section 27 of Indian Evidence Act as well.

6. Learned counsel for the petitioner further submits that it seems to be unbelievable that an employee, who is an outsider came to Patna visit only with an intention to look after the company's work and to perform his job, would involve himself in such type of offence. There is no reference to any



previous dispute leading to the instant occurrence. Further, there is no allegation that the petitioner entered into any discussion with deceased or there was any prior dispute or any exchange of words between the deceased and the petitioner.

7. It has also been submitted by learned counsel for the petitioner that there is no material on record to suggest that petitioner was in conspiracy with any accused persons. It has also been submitted that Section 227 of the Cr.P.C. provides that if, upon consideration of the records of the case, the documents submitted therewith and after hearing the submissions of the accused and the prosecution, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge accused and record his reasons for so doing.

8. In support of this submissions, learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of *Sajjan Kumar v. CBI*, reported in *(2010) 9 SCC 368*.

9. Learned counsel for the petitioner has also relied upon a judgment of the Hon'ble Supreme Court in *Union Of India vs Prafulla Kumar Samal & Anr.* reported as *1979 (3) SCC 4* and has submitted that in the aforesaid case it has



been held that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution or not.

10. Learned counsel for the petitioner has also placed reliance on another decision of the Hon'ble Supreme Court in the case of *M.E. Shivalingamurthy v. C.B.I.* reported in *(2020) 2 SCC 768* wherein the above principles have been reiterated.

11. Learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court in case of *Kanchan Kumar Vs. State of Bihar*, reported in *2022 (9) SCC 577*. Paragraph nos. 15 and 18 of the aforesaid decision read as under:-

"15. Summarising the principles on discharge under Section 227 Cr.P.C, in Dipakbhai Jagdishchandra Patel v. State of Gujarat, this Court recapitulated:

"23. 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 shifting 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 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. (emphasis supplied)

18. The conclusions that we have drawn are based on materials placed before us, which are part



of the case record. This is the same record that was available with the Special Judge (Vigilance) when the application under Section 227 Cr.P.C. was taken up. Despite that, the Special Judge (Vigilance) dismissed the discharge application on the simple ground that a roving inquiry is not permitted at the stage of discharge. What we have undertaken is not a roving inquiry, but a simple and necessary inquiry for a proper adjudication of an application for discharge. The Special Judge (Vigilance) was bound to conduct a similar inquiry for coming to a conclusion that a prima facie case is made out for the appellant to stand trial. Unfortunately, the High Court committed the same mistake as that of the Special Judge (Vigilance)."

12. Learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Ram Prakash Chadha vs. State of Uttar Pradesh (Cr. Appeal No.2395 of 2023)*** and has submitted that in the aforesaid case it has been held by the Hon'ble Supreme Court that 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.



13. Learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court in the case of ***Mahmood Ali and Others vs. State of U.P and Ors.*** reported as ***2023 SCC OnLine SC 959***. Paragraph no.13 of the aforesaid decision, which reads as under:-

“13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the



averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

14. By making the aforesaid submissions, learned counsel for the petitioner submits that this is a fit case where this Court may exercise the jurisdiction under Section 482 of the Cr.P.C. to release the petitioner from the rigorous of



Trial.

15. Learned counsel for the opposite party no.2 submits that from perusal of the F.I.R. it will be evident that petitioner is named in the F.I.R. along with other persons and all named persons came with common intention to pressurize the deceased for purchasing and selling the products of their Company and they came at the shop of the deceased with preparation and when the deceased refused, they fired on the deceased resulting in his death.

16. Learned counsel for the opposite party no.2 further submits that during investigation, the police recorded the statement of Binay Kumar, who was found to be an eye witness to the occurrence and this witness in his statement has named three persons i.e. Bunty Kumar @ Prakash Kumar, Ritu Raj and the present petitioner. This witness specifically stated about the involvement of the petitioner in giving threat to the deceased and therefore, the case is made out against the petitioner regarding common intention, preparation and motive.

17. It has been submitted by learned counsel for the opposite party no.2 that during investigation co-accused Ritu Raj, Keshav Raj and Gaurav Kumar @ Priyanshu have been arrested and they confessed their guilty and in their



confessional statements they disclosed the name of the petitioner.

18. It has also been submitted that during investigation the mobile location of the petitioner was also found surrounding the place of occurrence and after thorough investigation the Police submitted charge sheet against the petitioner and other accused persons. After submission of charge sheet, cognizance has been taken against the petitioner and other accused persons.

19. It has been argued by learned counsel for the opposite party no.2 that from perusal of F.I.R. and material found during investigation, there is sufficient material on record to connect the petitioner with the crime and therefore, this Court may not interfere with the impugned order by which the discharge application of the petitioner has been rejected by the trial court.

20. I have considered the submissions of the parties and perused the materials on record.

21. The Hon'ble Supreme Court in the case of *Sajjan Kumar v. CBI (supra)* has considered the scope of Sections 227 and 228 of the Cr.P.C. The principles which emerged therefrom have been taken note of in paragraph no.17



of the said judgment, which reads as under:-

“17. Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge :-

- “(i) The Judge while considering the question of framing the charges under Section 227 of the 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."*

22. On perusal of the F.I.R., it appears that no specific allegation of any overt act or active involvement is alleged against the petitioner except his innocuous presence at



the place of occurrence. The petitioner is an outsider working as Regional Sales Manager, Central Region (Bihar, Jharkhand, Madhya Pradesh and Chattisgarh) in the Britannia Industries Limited and he used to visit the market of different States on regular basis to look after the company's work. Therefore, it seems to be improbable that such a higher official, who is looking after the company's work in four States and an outsider, would come to Patna to look after the company's work, would be involved in such type of offence. Further, there is no allegation that the petitioner has entered into any discussion with any person and there is no prior dispute between the petitioner and informant side. Mere mentioning the name of the petitioner in the F.I.R. will not make out a case against him unless strong suspicion or materials are available against the petitioner for framing of charge. Further, during investigation, the prosecution has not brought out any material to directly connect the petitioner with the alleged crime. There is no motive assigned to the petitioner, who is not directly involved with the day-to-day affairs of the market. In the present case, the prosecution has not produced any materials which can be translated into evidence at the stage of trial. Strong suspicion must be founded on some material evidence as presented by the



prosecution which is lacking in the present case. Therefore, the petitioner should not undergo the rigors of criminal trial.

23. Considering the aforesaid facts as well as the law laid down by the Hon’ble Supreme Court in the case of *Sajjan Kumar v. CBI (supra)*, this application is allowed. Accordingly, the impugned order dated 25.04.2023 passed by learned Additional Sessions Judge, XXI, Patna in S.T. No.329 of 2023 is hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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