

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9664 of 2018

Arising Out of PS. Case No.-18 Year-2012 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

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Md. Sarwar Ali Khan @ Md. Sarwar Ali, Son Of Sri Md. Shabbir Khan
Resident Of Mohalla- Samanpura, Raja Bazar, P.S. Shastri Nagar, District-
Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal- Sr. Advocate Mr. Manoj Kumar Pandey- Advocate Ms. Pallavi Kumari- Advocate
For the State	:	Smt. Gulnar Begam- A.P.P.
For the E.O.U.	:	Mr. V. N. P. Sinha- Sr. Advocate Ms. Soni Shrivastava- Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 05-01-2024 1. Heard learned senior counsel Mr. N. K. Agrawal

for the petitioner, learned APP for the State and learned senior
counsel Mr. V. N. P. Sinha for the Economic Offences Unit
assisted by Ms. Soni Shrivastava.

2. The learned senior counsel for the petitioner
submits that the present quashing application has been filed
seeking quashing of the order dated 10.08.2017 passed by the
learned S.D.J.M., Patna in connection with Economic Offences
P. S. Case No.18 of 2012, G.R. No.5045 of 2012, whereby
application filed under Section 239 of the Cr.P.C., seeking
discharge, has been rejected.



3. The learned senior counsel for the petitioner next draws the attention of the Court to the impugned order dated 10.08.2017 to submit that the order is cryptic and is lacking in essential details. It is next submitted that when an application seeking discharge is filed, the Court is obliged to look into the material to arrive at a conclusion as to whether the material collected during the course of investigation warrants a trial of the accused or the material collected against the accused during investigation is insufficient which requires his discharge. The learned senior counsel next submits that no doubt, the Economic Offences Unit investigated the case and filed charge-sheet, but then, in the discharge application, the petitioner had raised issues pointing towards his innocence that he has been falsely implicated in the present case, but then, the learned trial Court in a mechanical manner dismissed the discharge application even without considering the submissions raised by the petitioner in his discharge application.

4. The learned senior counsel submits that the discharge application was filed under Section 239 of the Cr.P.C., which reads as under:-

"Section 239 when accused shall be



discharged:- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

5. The learned senior counsel relying on the case of Onkar Nath Mishra and Ors. Versus State (NCT of Delhi) (2008) 2 SCC 561 submits that it is trite that at the stage of framing of charge 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, discloses the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual



ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence. The learned senior counsel, thus, submits that from perusal of the order impugned, it would manifest that the learned Magistrate while dismissing the application seeking discharge under Section 239 Cr.P.C. did not even record his reason that as to what material transpired during the course of investigation which created strong suspicion against the petitioner requiring his trial. It is next submitted that the Court is not to act like a post office and mouthpiece of the prosecution rather the Court has to apply its judicial mind to arrive at a conclusion based on the materials which transpired during the course of investigation to ascertain whether from the facts emerging on record, the accused is to be discharged or his trial is required. It is next submitted that no doubt the learned Magistrate in the order impugned has recorded that materials were perused but then the order does not even remotely suggest that what materials were perused which persuaded the Court for rejecting the discharge application of the petitioner which renders the order impugned vulnerable.



6. The learned senior counsel for the Economic Offences Unit is not in a position to rebut the submission of the learned senior counsel for the petitioner rather fairly submits that the order by which discharge application has been rejected though records that material were perused, but then, does not disclose as to what materials were perused nor considers the issues raised by the petitioner in his discharge application.

7. The Court prima facie is of the view that the order by which discharge application has been rejected is cryptic and does not consider the issues raised by the petitioner in his discharge application, nor records that as to what materials were there in the case diary which persuaded the learned trial Court to take a view against the petitioner warranting dismissal of the discharge application.

8. Accordingly, the order dated 10.08.2017 passed by the learned S.D.J.M., Patna in connection with Economic Offences P. S. Case No.18 of 2012, G.R. No.5045 of 2012 is set aside and the matter is remanded back to the learned trial Court for taking a fresh decision on the discharge



application of the petitioner in accordance with law.

(Satyavrat Verma, J)

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