

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42617 of 2015

Arising Out of PS. Case No.-216 Year-2010 Thana- MOTIHARI MUFASIL District- East
Champaran

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1. Rekha Rai S/o Late Punit Rai
 2. Munnilal Rai S/o Shankar Rai
 3. Surendra Rai S/o Rama Rai
 4. Dipak Rai S/o Rekha Rai
 5. Puran Rai S/o Late Shivnandan Rai
 6. Bijoy Rai S/o Puran Rai
 7. Shankar Rai S/o Late Panchu Rai
 8. Mahendra Rai S/o Dwarika Rai
 9. Nanhak Rai S/o Rekha Rai
 10. Rajesh Rai S/o Rama Rai
All Resident of Village-Hariyan Chapra, P.S.-Motihari, Moffasil, District-
East Champaran.

... .. Petitioners

Versus

1. The State of Bihar
2. Gayatri Devi, W/o Sahdeo Paswan, village-Hariyana Chapra, P.S.,-Motihari
Moffasil, District-East Champaran.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tondon, Advocate
For the Opposite Party/s : Ms. Sahin Begum, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 02-05-2024

Heard learned counsel for the petitioners and
learned APP for the State.

2. The present application has been filed by the
petitioners for quashing the order dated 29.06.2015 passed
by the learned 1st Additional Sessions Judge, Motihari in Tr.



No.21 of 2014 arising out of Motihari P.S. Case No.216 of 2010, whereby the learned Sessions Judge has rejected the petition of the petitioners filed under Section 228 of the Code of Criminal Procedure (for short 'Cr.P.C.').

3. The case of the prosecution, in brief, is that the complainant/informant has filed a complaint, bearing Complaint Case No.2204 of 2010 on 21.09.2010 in the court of learned Chief Judicial Magistrate, Motihari alleging therein that on 02.09.2010 the accused persons after forming an unlawful assembly having variously armed with *lathi*, *danda* and *farsa* in their hands came to her home and co-accused Vijay Rai pressed her neck and other accused persons assaulted her and abused her by calling her *dusaddin/ Harijan*. It was further alleged that the accused persons committed loot-pat and took away the house-hold articles. The informant further alleged in the complaint that since police has not instituted the FIR hence, she filed the complaint case.

4. With aforesaid allegation, the police after investigation submitted charge-sheet for the offences



punishable under Sections 147, 149, 341, 323, 447, 504 of the Indian Penal Code (for short 'IPC') and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act'), where after perusal of materials as available on record, learned Special Court took cognizance for the offences.

5. It is submitted by learned counsel appearing for the petitioners that the prayer of petitioners as to discharge them for the offences alleged under Section SC/ST Act was rejected through impugned order without any application of judicial mind, as from the allegation as available under FIR is not reflecting *prima facie* that occurrence took place by committing atrocities as defined under SC/ST Act. It is submitted that the allegation is to abuse the complainant/informant by taking caste name is not appearing in public view, as same was alleged to be made at *darwaja* (out of courtyard). With this limited prayer, the present petition of quashing was preferred as to quash the impugned order as mentioned above.

6. On repeated calls, learned counsel appearing



for opposite party no.2 failed to join the present proceedings.

7. It would be apposite to reproduce Para-17-20 of the legal report of Hon'ble Supreme Court as rendered in the matter of **Sheoraj Singh Ahlawat v. State of U.P., [(2013) 11 SCC 476]**, which run as under:-

"17. So also in *Mohanlal case* [(2000) 6 SCC 338] this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the court prima facie finds that there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in *Mohanlal case* [(2000) 6 SCC 338] is in this regard apposite:

"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."



18. In *State of Orissa v. Debendra Nath Padhi* [(2005) 1 SCC 568] this Court was considering whether the trial court can at the time of framing of charges consider material filed by the accused. The question was answered in the negative by this Court in the following words:

"18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. ... Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth



on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material."

19. Even in *Rumi Dhar v. State of W.B.* [(2009) 6 SCC 364], reliance whereupon was placed by the counsel for the appellants, the tests to be applied at the stage of discharge of the accused person under Section 239 CrPC were found to be no different. Far from readily encouraging discharge, the Court held that even a strong suspicion in regard to the commission of the offence would be sufficient to justify framing



of charges. The Court observed:

"17. ... While considering an application for discharge filed in terms of Section 239 of the Code, it was for the learned Judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law."

20. To the same effect is the decision of this Court in *Union of India v. Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] where this Court was examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under:

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

(1) 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.

(2) 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.



(3) 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.

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

8. It appears from the perusal of complaint petition and impugned order that abusing in caste name was made at *darwaja*, it is nowhere appeared that said occurrence took place at lonely place out of public view. The impugned order also suggest by referring the different paragraphs of the case diary, where the fact is supported. Beside that, after investigation, charge-sheet was also submitted under the SC/ST Act by the investigating agency.



Hence, the materials on record are satisfying the *prima facie* requirement as to charge the petitioners for the offence under Section 3(1)(x) of the SC/ST Act.

9. Accordingly, there is no merit in this application. The application is dismissed.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
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