

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2396 of 2019

Arising Out of PS. Case No.-285 Year-2014 Thana- SHRIKRISHNAPURI District- Patna

Rananjay Kumar @ Rananjay Kumar Solanki, S/O Ramakant Singh R/o Solanki House, Azad Nagar, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh

For the Opposite Party/s : Mr. Murlidhar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 08-08-2024

Heard learned counsel for the petitioner and
learned A.P.P. for the State.

2. The present application has been preferred for quashing the order dated 06.09.2018 passed in S.K. Puri P.S. No. 285 of 2014 registered u/s 25(1-B)a, 26, 35 of Arms Act by learned Special Judge CBI-cum-Additional Chief Judicial Magistrate, Patna, whereby and whereunder, learned trial Court rejected the discharge petition.

3. The factual matrix of the prosecution is that petitioner, after receiving injury, was admitted in hospital



and during inquiry it has come to light that he received injury in the flat of co-accused Saurav Kumar. On search, of the flat of co-accused Saurav Kumar, one pistol, two live cartridges and two empty cartridges, hidden beneath the bed, were recovered. It is further alleged that on 05.08.2024, petitioner and co-accused Saurav Kumar were talking in the aforesaid flat and petitioner was showing the pistol to co-accused Saurav Kumar for the purpose of sale and some defect cropped up in firing and due to this petitioner sustained gun shot injury.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is innocent and has committed no offence and has been implicated wrongly and falsely in this case. There is no specific allegation against the petitioner. It is submitted on behalf of the petitioner that this petitioner has received two gun shot injuries on his body ie. on the left hand and left thigh. So, the petitioner happens to be a victim



of the alleged occurrence and not an accused. In this case it is apparent that this petitioner, at best, is an eye witness of the occurrence. So, his name may be included in the name of prosecution witness list but the investigating officer of the case has intentionally dragged his name as one of the accused of this case. Chargesheet has been submitted in this case. Hence, entire material evidence against this petitioner is on record and from perusal of the same it appears that there is no ingredient of any section in which cognizance has been taken.

5. It is also submitted that this seizure list of the case has revealed that the alleged recovery of arms and ammunition was neither made from the body of the petitioner nor from his place. Such recovery cannot be fastened upon him by any legal means. The criminal liability of others cannot be shifted upon innocent person like the petitioner by any legal means. It is further submitted that the Sections 25(1-B)a, 26, 35 of the



Arms Act attract in that situation that the accused must be found in possession of any firearm or ammunition. Whereas, it is admitted fact that nothing has been recovered from conscious and physical possession of the petitioner. So, ingredients of these Sections are lacking against the petitioner in all respects. Impugned order has been passed by the learned trial Court on the basis of conjuncture and surmise without consistent and cogent evidence against the petitioner in respect of discharge to the petitioner from the aforesaid offence. The impugned order is fit to be disbelieved and set aside. Learned trial Court has totally failed to appreciate the evidence/material against this petitioner for the purpose of framing of charge because it is well settled principle of law that prima facie appreciation for the purpose of taking cognizance and framing of charge is quite different and learned Trial Court has to apply its judicial mind for the purpose of framing of specific charge under specific Section. According to facts and



circumstances of this case, it is evident that the implication of present petitioner in the instant case is wrong and false. The chain of circumstance of this case completely goes to show that the present case is totally false and continuance of criminal proceeding in the learned Court below against the petitioner is an abuse of process of Court as such the order dated 06.09.2018, passed in connection with S.K. Puri P.S. Case No. 285 of 2014 is fit to be quashed with all its consequences.

6. In contra, while opposing the prayer of petitioner, learned A.P.P. submitted that after completing the investigation, chargesheet has been submitted against the petitioner and other accused person and after considering the evidence, which was collected by the Investigating Officer during investigation, learned Trial Court has taken cognizance in appropriate Section of the Arms Act. While rejecting the discharge petition of the petitioner, trial Court has not committed any wrong and the impugned order is fit & proper and sustainable.



So, the instant petition of quashing of impugned order is fit to be dismissed.

7. Before dealing with the merit of present quashing application, it is necessary to consider the nature and scope of the inherited power of the High Court under Section 482 of Cr.P.C. The said Section saves the inherent power of the High Court to make fresh orders as measures necessary in three different situations.

(a) to give effect to an order under this Court.

(b) to prevent abuse of the process of the Court.

(c) to otherwise secure the ends of justice.

8. In the case of **State of Haryana and others vs. Ch. Bhajanlal and others reported in AIR 1992 SC 604** in the exercise of the inherent powers under Article 226 or Section 482 of the Code of Criminal



Procedure, the following categories of cases are given by the way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide 7 (seven) myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose 265 the commission of



any offence and make out a case against the accused;

(d) 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;

(e) 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;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide 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.

9. In the case of **Rajiv Thapar and others**
Vs. Madan Lal Kapoor reported in (2013) 3 SCC



330, the Hon'ble Supreme Court laid down the four steps test for quashment in exercise of inherent power of the High Court under Sections 482 of Cr.P.C. Those are as under:-

"30.1. Step one: Whether the material relied upon by the accused is sound, reasonable and indubitable ie. the material is of sterling and impeccable quality?"

30.2. step two: Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?"

30.3. Step three: Whether the material relied upon by the accused has not been refuted by the prosecution/complaint; and/or the material is such that it cannot be justifiably refuted by the prosecution/



complaint?

30.4 Step four: whether proceeding with the trial would result in an abuse of process of the Court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 of Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

10. I have gone through the entire fact of this case, F.I.R. as well as impugned order passed by the trial Court. It would be relevant to mention the provisions of relevant Sections in which the F.I.R. has been registered, cognizance has been taken and the



impugned order has been passed in respect of petition of the petitioner for discharging the petitioner for the offence mentioned in the relevant sections of the Arms Act.

Section 25(1-B)a Whoever:-

(a) Acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3.

Section 26 of Arms Act *dealt with secret contraventions with regard to firearm and ammunition.*

Section 35 of Arms Act *related to criminal responsibility of persons in occupation of premises in certain cases.*

11. From perusal of the seizure list (annexed with the supplementary affidavit as P/2), it is apparent that the alleged recovery of arms and ammunition (one pistol, two live cartridges and two empty cartridges) was neither made from the body of petitioner nor from his house. The said arms and ammunition were seized from the house of Captain Birendra Mandal, precisely, from



the room of co-accused Saurav Kumar, beneath the bed. It is prima facially apparent that the said arms and ammunition has not been recovered from conscious and physical possession of the petitioner. It would be proper to mention here that prior a day, this petitioner has made *Fardbayan* (annexed with the Supplementary Affidavit as Annexure P/3) before Sub Inspector of P.S. Kankarbagh on 5th of August, 2014, according to which he received two gun shot injuries fired by two unknown persons. For the treatment of the said injuries, the petitioner was admitted in hospital. The petitioner is also a victim but due to arbitrariness of the informant of this case, without any inquiry or investigating the matter properly, petitioner's name has been dragged in the present case without any rim and reason. According to the instant case, the case has been lodged against the petitioner without any consistent and cogent evidence. Neither the petitioner was apprehended on the spot nor there is any recovery of arms and ammunition from the



conscious possession of the petitioner. While the Sections of Arms Act in which the chargesheet has been submitted not attracted against the petitioner because it is an important ingredient for the offence u/s 25(1-B)a, 26 and 35 of Arms Act that the arms and ammunition must be recovered from the conscious possession of the accused person. No ingredients of aforesaid sections of Arms Act prima facially made out in the instant case against the petitioner. I am of this view that no any fire arm or ammunition has been recovered from the conscious and physical possession of the petitioner. There was no any case against the petitioner that he was involved in secret contravention of any firearm or ammunition. No any firearm and ammunition has been recovered from the premises of the petitioner. So, no case is made out against the petitioner under these Sections.

12. While it is true that this Court needs to exercise its extra ordinary writ jurisdiction to quash the



impugned order with all circumspection and care, in the present case this Court is of the considered opinion that the allegation made against the petitioner is completely vague. This Court is therefore requires to look into the developments in law, particularly in the field of granting relief to the petitioner who is facing prosecution on the basis of mere vague and false allegations. There are uncontroverted material which may be relied upon safely in the light of the judgment of Hon'ble Supreme Court in the case of Bhajanlal and Rajeev Thapar (Supra). This case would pass the tests laid down in the said judgment.

13. In ultimate analysis, this Court is of the considered opinion that the case against the petitioner is without prima facie evidence. Petitioner has no concern with the seized arms and ammunition which has alleged to be recovered in this case. The premises from which the said arms and ammunition has been alleged to be recovered not relates to this petitioner. So,



I am of this view that the instant case lodged against the petitioner would only be an abuse of the process of Court. To save him from sheer harassment, the ends of justice requires that the impugned order passed by learned Special Judge CBI-cum-ACJM, Patna in connection with S.K. Puri P.S. Case No. 285 of 2024 is fit to be quashed.

14. Accordingly, this Court quashes the impugned order against this petitioner.

15. The instant application is allowed to the extent indicated, hereinabove.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	AFR
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