

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4502 of 2018

Arising Out of PS. Case No.-5 Year-2016 Thana- ROSHANGANJ District- Gaya

-
1. Ran Vijay Kumar Son of Late Ramnandan Prasad @ Ramnandan Singh, Resident of Village- Chhotka Jamuara Khurd, P.S.- Raushanganj, District- Gaya.
 2. Santosh Chaudhary, Son of Teni Chaudhary, Resident of Village- Khapdod, P.S.- Banke Bazar, District- Gaya.

... .. Appellant/s

Versus

1. State Of Bihar
2. Sanju Kumari D/o Late Randeo Manjhi, Resident of Village- Shekhwara, P.S.- Magadh University, District- Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sudhir Kumar Sinha, Advocate
For the Respondent/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

11 13-11-2025 Heard the learned counsel for the appellants and the learned counsel for the State.

2. This criminal appeal is directed against the order dated 29.08.2018 passed by the learned Exclusive Special Judge, SC/ST Act, Gaya in connection with SC/ST Trial No. 269 of 2017 arising out of Raushanganj (Bankey Bazar) P.S. Case No. 05 of 2016 registered under Sections 385, 376/511, 34 of the Indian Penal Code and subsequently, Section 3(1)(xi)(xii) was added by order dated 30.08.2016 by which the Court below has rejected the petition filed on behalf of appellants for discharge from the case.



3. The appellants are alleged to have tried to commit rape with the victim. On the basis of written report of the informant Sanju Kumar, Raushanganj (Bankey Bazar) P.S. Case No. 05 of 2016 was registered under Sections 385, 376, 511/34 of the IPC against the appellants and subsequently, Sections 3(1)(xi)(xii) of the SC/ST Act was added by order dated 30.08.2016 and the police after investigation submitted charge-sheet vide Charge-sheet No. 67 of 2016 under Sections 385, 376/511 of the IPC and Sections 3(1)(xi)(xii) of the SC/ST Act against the appellants.

4. The learned counsel for the petitioner has submitted that the order rejecting application for discharge is perverse since it suffers from total non application of mind.

5. The learned counsel for the State has vehemently opposed the application of the appellants by submitting that the orders impugned have rightly been passed and suffers no illegality.

6. I have heard and considered the submissions of the parties and have also gone through the records of the case.

7. Summarising the principles on discharge under Section 227 Cr.P.C, in *Dipakbhai Jagdishchandra Patel vs. State of Gujarat & Anr.* reported as (2019) 16 SCC 547, the



Hon'ble Supreme Court had held as under :-

“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 sifting 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)

8. The Hon'ble Supreme Court in ***M.E.***

Shivalingamurthy vs. CBI, reported as ***(2020) 2 SCC 768*** had

culled out the principles and held as under :-

“Legal principles applicable in regard to an application seeking discharge

17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. *P. Vijayan v. State of Kerala* [*P. Vijayan v. State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.



- 17.2. *The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.*
- 17.3. *The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.*
- 17.4. *If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial.*
- 17.5. *It is open to the accused to explain away the materials giving rise to the grave suspicion.*
- 17.6. *The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.*
- 17.7. *At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.*
- 17.8. *There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.*
18. *The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar [State of J&K v. Sudershan Chakkar, (1995) 4 SCC 181 : 1995 SCC (Cri) 664 : AIR 1995 SC 1954]). The expression, “the record of the case”, used in Section 227 Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568.”*

9. The Hon’ble Supreme Court in the case of

State of Gujarat vs. Dilipsinh Kishoresinh Rao reported as



(2023) 17 SCC 688 has held as under:-

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. This Court in State of T.N. v. N. Suresh Rajan adverting to the earlier propositions of law laid down on this subject has held: (SCC pp. 721-22, para 29)

29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can



frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency." (emphasis supplied)

10. From the afore-quoted judgment it is abundantly clear that at the stage of deciding application for discharge, the court has to satisfy whether there are sufficient material to proceed with the trial and not whether there are sufficient material to convict. From the perusal of the impugned order, it appears that *prima facie* case has been found by the learned Special Judge for framing of charge after considering the materials available on record. Charge sheet was submitted against the appellants finding the case to be true. The learned Special Judge after finding sufficient materials has passed the impugned order taking cognizance.

11. Considering the nature of the allegations and the gravity of the offences alleged, this Court finds no error or



illegality in the impugned order.

12. Accordingly, the appeal stands dismissed. The trial court shall proceed with the trial in accordance with law and ensure its expeditious conclusion.

(Sandeep Kumar, J)

Shishir/-

U			
---	--	--	--

