IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18402 of 2025

Arising Out of PS. Case No.-200 Year-2021 Thana- PHULPARAS District- Madhubani

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Nikesh Jha, Male aged about 30 years Son of Ashok Jha resident of village- Genhua Beria, P.S.- Phulparas, District- Madhubani

... ... Petitioner/s

Versus

1. The State of Bihar
2. Ashutosh Kumar Jha, Male aged about 31 years son of Vijaykant Jha resident of village- Genjua Beria, P.S.- Phulparas, District- Madhubani

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Sinha, Advocate
Mr. Aarsh Kumar, Advocate
Mr. Chandan Kumar Singh, Advocate
Mr. Ravi Kant Tiwari, Advocate

For the State : Mr. Ajit Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 20-11-2025

Heard Mr. Rajesh Sinha, learned counsel appearing on behalf of the petitioner and Mr. Ajit Kumar, learned A.P.P. for the State.

2. The petitioner has preferred application under Section 528 BNSS for quashing of the order dated 19.12.2024 passed by the learned Additional Sessions Judge-IV, Jhanjharpur in Phulparas P.S. Case No. 200 of 2021 by which, the application filed by the petitioner under Section 227 Cr.P.C. has been rejected.

3. As per the allegation made in the FIR, the petitioner along with five other accused persons, had allegedly

assaulted the informant causing injury on the vital part of the body including head injury. Specific allegation against the petitioner apart from having assaulted the informant along with other accused persons, is also that he had snatched a sum of rupees twenty thousand from the pocket of the informant. The FIR was lodged under Sections 341, 323, 308, 379 and 504/34 of the Indian Penal Code, however, the charge-sheet was submitted on 31.08.2021 under Sections 341, 323, 308 and 504/34 of the Indian Penal Code.

4. Learned counsel appearing on behalf of the petitioner submitted that from bare perusal of the FIR, it becomes apparent that allegation against the petitioner is specific that he had allegedly snatched a sum of rupees twenty thousand from the pocket of the informant, however, the police has found it untrue in its supervision report, as well as, in the final form and, as such, charge-sheet was not submitted under Section 379 of the Indian Penal Code. In this regard, he submitted that a specific statement has been made in paragraph no. 12 of the present application. He further submitted that petitioner is an employee of Indian Railways and as a result of malicious and vexatious allegations, he will be unnecessary harassed in absence of any material or evidence collected

against him in course of investigation.

5. Learned counsel submitted that in such circumstances, the Hon'ble Supreme Court has deprecated the practice of learned trial Court, insofar as, taking of the cognizance. Learned counsel has relied upon the principle laid down by the Apex Court in respect of exercise of jurisdiction by the concerned Court under Section 227 Cr.P.C., in the case of ***State of Karnataka vs. L. Muniswamy & Ors.*** reported in ***AIR 1977 SC 1489*** and in the case of ***Dilawar Balu Kurane vs. State of Maharashtra*** reported in ***(2002) 2 SCC 135***.

6. *Per contra*, learned A.P.P. for the State submitted that learned District Court has considered each and every aspect including the materials available on record, therefore, interfering with the trial at this stage is unwarranted. The contention of the petitioner that he ought to be discharged, has rightly been rejected by the Additional Sessions Judge-IV, Jhanjharpur in exercise of power under Section 227 of the Code of Criminal Procedure.

7. Heard the parties.

8. The question arises before this Court, as to whether, there is sufficient ground for proceeding against the petitioner?

9. Record reveals that allegations alleged in the FIR are under Sections 341, 323, 308, 379 and 504/34 of the Indian Penal Code. Upon submission of the charge-sheet, the police found case to be not true against the petitioner under Section 379 of the Indian Penal Code. Learned Magistrate took cognizance under Sections 341, 323, 308 and 504/34 of the Indian Penal Code. Therefore, in the interest of justice whether the action of the magistrate in exercise of power under Section 227 rejecting the application of the petitioner and allowing him to face the trial is justified.

10. In regard to the scope and exercise of power under Section 482 of Cr.P.C., Section 397(2) of Cr.P.C. and under Articles 226 and 227 of the Constitution of India, in matters of this nature, the Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Private Ltd.*** reported in ***(2018) 16 SCC 299*** has held at paragraphs-21 and 22 as follows:

> *"21. The principles laid down in Madhu Limaye still hold the field and have not been in any manner diluted by the decision of four Judges in V.C. Shukla versus State or by recent three Judge Bench decision in Girish Kumar Suneja versus Central Bureau of Investigation. Though in V.C. Shukla, order framing charge was held to be interlocutory order, judgment in Madhu Limaye taking a contrary view was distinguished in the context of the statute considered therein. The view in S. Kuppuswami Rao, was held to have been endorsed in Mohanlal Maganlal Thacker though factually in Madhu Limaye, the said view was explained differently, as already noted. Thus, in spite of the fact that V.C. Shukla is a judgment by*

Bench of four Judges, it cannot be held that the principle of Madhu Limaye does not hold the field. As regards Girish Kumar Suneja, which is by a Bench of three Judges, the issue considered was whether the order of this Court directing that no Court other than this Court will stay investigation/trial in Manohar Lal Sharma versus Union of India [Coal Block allocation cases] violated right or remedies of the affected parties against an order framing charge. It was observed that the order framing charge being interlocutory order, the same could not be interfered with under Section 397(2) nor under Section 482 Cr.P.C. It was further held that stay of proceedings could not be granted in the PC Act cases even under Section 482 Cr.P.C. It was further observed that though power under Article 227 is extremely vast, the same cannot be exercised at the drop of a hat as held in Shalini Shyam Shetty versus Rajendra Shankar Patil as under:

37. ... '49. ... This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 of the Constitution is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

22. It was observed that power under Section 482 Cr.P.C. could be exercised only in rarest of rare cases and not otherwise:

"38. The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) Cr.P.C. is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 Cr.P.C. is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the

> *benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues."*

11. In this regard, I find it apt to reproduce paragraphs no. 7 to 11 in the case of ***L. Muniswamy (supra)*** which *inter alia* are as under:

> *"**7.** The second limb of Mr Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:*
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> *"If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*
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> *This section is contained in Chapter 18 called "Trial Before a Court of Session". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:*
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> *"Nothing in this Code shall be deemed to*

limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or other wise to secure the ends of justice."

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

8. *Let us then turn to the facts of the case to see whether the High Court was justified in holding that the proceedings against the respondents ought to be quashed in order to prevent abuse of the process of the court and in order to secure the ends of justice. We asked the State counsel time and again to point out any data or material on the basis of which a reasonable likelihood of the respondents being convicted of any offence in connection with the attempted murder of the complainant could be predicated. A few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respondents with the crime, howsoever skilfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any tribunal could reasonably convict the respondents for any offence connected with the assault on the complainant. It is undisputed that the respondents were nowhere near the scene of offence at the time of the assault. What is alleged against them is that they had conspired to commit that assault. This, we think, is one of those cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking. We have been taken through the statements recorded by the police during the course of investigation and the other material. The worst that can be said against the respondents on the basis thereof is that they used to*

meet one another frequently after the dismissal of Accused 1 and prior to the commission of the assault on the complainant. Why they met, what they said, and whether they held any deliberations at all, are matters on which no witness has said a word. In the circumstances, it would be a sheer waste of public time and money to permit the proceedings to continue against the respondents. The High Court was therefore justified in holding that for meeting the ends of justice the proceedings against the respondents ought to be quashed.

9. *Learned counsel for the State Government relies upon a decision of this Court in R.P. Kapur v. State of Punjab AIR 1960 SC 866 in which it was held that in the exercise of its inherent jurisdiction under Section 561-A of the Code of 1898, the High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not. That may be so. But in the instant case the question is not whether any reliance can be placed on the veracity of this or that particular witness. The fact of the matter is that there is no material on the record on the basis of which any tribunal could reasonably come to the conclusion that the respondents are in any manner connected with the incident leading to the prosecution. Gajendragadkar, J., who spoke for the Court in Kapur case observes in his judgment that it was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. The three instances cited in the judgment as to when the High Court would be justified in exercising its inherent jurisdiction are only illustrative and can in the very nature of things not be regarded as exhaustive. Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the strait-jacket of a rigid formula.*

10. *On the other hand, the decisions cited by learned counsel for the respondents in Vadilal Panchal v. D.D. Ghadigaonkar AIR 1960 SC 1113 and Century Spinning & Manufacturing Co. v. State of Maharashra AIR 1972 SC 545 show that it is wrong to say that at the stage of framing charges the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. In Vadilal Panchal case, Section 203 of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint if after considering certain matters mentioned in the section there was in his*

judgment no sufficient ground for proceeding with the case. To an extent Section 327 of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court, while considering the true scope of Section 203 of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to form his judgment. These decisions show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.

11. *We are therefore in agreement with the view of the High Court that the material on which the prosecution proposes to rely against the respondents is wholly inadequate to sustain the charge that they are in any manner connected with the assault on the complainant. We would, however, like to observe that nothing in our judgment or in the judgment of the High Court should be taken as detracting from the case of the prosecution, to which we have not applied our mind, as against Accused 1 to 9. The case against those accused must take its due and lawful course.*

12. The Apex Court in the case of ***Dilawar Balu Kurane (supra)*** in paragraph no. 12 has held as under:

*"**12.** Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4."*

13. Considering the facts and circumstances of the case, as well as, law laid down by the Apex Court as referred herein-above, I find that in absence of any material against the petitioner, allowing the concerned Court to proceed, will amount to blindly accept the decision of the prosecution. Accordingly, the impugned order dated 19.12.2025 passed by learned Additional Sessions Judge-IV, Jhanjharpur, is hereby quashed and set-aside.

14. Accordingly, the present application stands disposed of.

(Purnendu Singh, J)

Niraj/-

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