IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4823 of 2018
Arising Out of PS. Case No.-20 Year-2018 Thana- KHUSRUPUR District- Patna

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Mukesh Kumar, son of Devendra Singh, Resident of Village - Baikatpur, P.S.- Khusrupur in the District – Patna.

... ... Appellant

Versus

1. State Of Bihar
2. Munna Kumar Paswan Son of Vishwanath Paswan Resident of Village - Baikatpur Devi Asthan, P.s.- Khusrupur, District - Patna

... ... Respondents

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Appearance :
For the Appellant : Mr. Raj Kumar, Advocate
For the State : Mr. Binay Krishna, Spl. P.P.
For the Respondent No.2 : Mr. Rajen Sahay, Advocate
Mr. Raj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 28-01-2026

In this appeal, the appellant has challenged the order dated 01.11.2018 passed by the learned District & Sessions Judge, IV-cum-Special Judge, S.C./S.T. Patna, by which the learned Judge has rejected the discharge petition filed by the appellant.

2. As per the F.I.R. on the date of occurrence, one Praduman Singh came to the house of the informant at about 2:00 P.M. and requested the brother of the informant (Chotu Kumar) to drop him to the market, since his own vehicle was out of order. Thereafter, the brother of the informant along with said Praduman Singh and the informant went to the market and while they were near a bamboo orchard (*Tara Baba ke Bagicha*) the said Praduman Singh asked the brother of the

informant to stop the vehicle. As soon as, the brother of the informant, stopped the motorcycle, 5-7 persons surrounded them and one Bholu Singh shot at the brother of the informant in the head. It has also been alleged that at that time one Vikas Singh, Doman Singh and Raj Kumar Singh and 3-4 other persons whom the informant can identify but does not know their names were also present. Thereafter, the informant in order to save his life raised *hulla* and ran towards his house and informed his family members about the incident and when the informant and his family members came at the place of occurrence they saw that the body of the brother of the informant was laying there. Thereafter, the brother of the informant was taken to the hospital where the doctor declared him dead. It has also been alleged that the accused persons used to torture the informant and his family members by taking their caste name.

3. Learned counsel for the appellant submits that the appellant is not named in the F.I.R. and he has falsely been implicated in this case merely on the basis of the statement of the witnesses. He further submits that the appellant and the informant belong to the same village and because of village politics he has falsely been implicated in this case though he

was not present at the place of occurrence.

4. It has been submitted by learned counsel for the appellant that one Bholu Singh had fired upon the brother of the informant and as a result of which, he died and while the informant side were going towards the alleged place of occurrence, they saw the appellant and other persons who were working in the field and started assaulting the appellant and Doman Singh, at that time, the police came there and took them to the police station. The appellant and co-accused were taken under custody by the police on the same day of occurrence before lodging the F.I.R.

5. It has also been submitted that the appellant is not named in the F.I.R. but the informant in his further statement has taken the name of the appellant that he was present at the place of occurrence. Further, though the father of the informant and one Vikram Paswan were not eye witnesses to the occurrence, but they have stated in their statements that the appellant and other accused persons were seen fleeing from the place of occurrence.

6. Learned APP for the State and learned counsel for the respondent no.2 have opposed this appeal and submitted that it is a case of murder and three witnesses in their

statements have specifically stated that the appellant is involved in the crime. They have also submitted that the accused persons including the appellant have also tortured the informant and his family members since they were the members of S.C./S.T. community.

7. I have considered the submissions of the parties and perused the materials available on record.

8. The present application has been filed assailing the order rejecting discharge petition preferred by the present appellant.

9. It would be apposite to refer the law laid down by the Hon'ble Supreme Court in the case of ***State of Bihar vs. Ramesh Singh*****,** reported as ***(1977) 4 SCC 39.*** Paragraph no.5 of the aforesaid decision reads as under **:-**

> *"5. In Nirmaljit Singh Hoon v. State of West Bengal [(1973) 3 SCC 753]-Shelat, J. delivering the judgment on behalf of the majority of the Court referred at p. 79 of the report to the earlier decisions of this Court in Chandra Deo Singh v. Prokash Chandra Bose [AIR 1963 SC 1430]- where this Court was held to have laid down with reference to the similar provisions contained in Sections 202 and 203 of the Code of Criminal Procedure, 1898* ***"that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for***

conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused"*. Illustratively, Shelat, J., further added "****Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case****".(emphasis supplied)*

10. Recently, the Hon'ble Supreme Court in the case ***Ram Prakash Chadha vs. State of U.P.*****,** reported as ***(2024) 10 SCC 651*** has held as under:-

"15. Section 227 CrPC, reads thus:

"227 Discharge.- 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."

16. We have already considered the meaning of the expression "the record of the case and the documents submitted therewith" relying on the decision in Debendra Nath Padhi case [State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 : 2005 SCC (Cri) 415] only to reassure as to

what are the materials falling under the said expression and thus, available for consideration of an application filed for discharge under Section 227CrPC. ***In the light of the same, there cannot be any doubt with respect to the position that at the stage of consideration of such an application for discharge, defence case or material, if produced at all by the accused, cannot be looked at all****. Once "the record of the case and the documents submitted therewith" are before the Court they alone can be looked into for considering the application for discharge and thereafter if it considers that there is no sufficient ground for proceeding against the accused concerned then he shall be discharged after recording reasons therefor. In that regard, it is only appropriate to consider the authorities dealing with the question as to what exactly is the scope of consideration and what should be the manner of consideration while exercising such power.*

17. The decision in Yogesh v. State of Maharashtra (2008) 10 SCC 394, ***this Court held that the words "not sufficient ground for proceeding against the accused" appearing in Section 227CrPC, postulate exercise of judicial mind on the part of the Judge to the facts of the case revealed from the materials brought on record by the prosecution in order to determine whether a case for trial has been made out****.*

18. *In the decision in State of T.N. v. N. Suresh Rajan (2014) 11 SCC 709 this Court held that* ***at a 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 materials to find out whether the facts taken at their face value disclose the existence of the ingredients constituting the offence. At this stage, only the probative value of the materials has to be gone into and the court is not expected to go deep into the matter to hold a mini-trial.

19. *In the decision in B.K. Sharma v. State of U.P. 1987 SCC OnLine All 314, the High Court of Judicature at Allahabad held that the standard of test and judgment which is finally applied before recording a finding of conviction against an accused is not to be applied at the stage of framing the charge. It is just a very strong suspicion, based on the material on record, and would be sufficient to frame a charge.*

20. *We are in agreement with the said view taken by the High Court. At the same time, we would add that the strong suspicion in order to be sufficient to frame a charge should be based on the material brought on record by the prosecution and should not be based on supposition, suspicions and conjectures. In other words, in order to be a basis to frame charge the strong suspicion should be the one emerging from the materials on record brought by the prosecution.*

21. *In the decision in Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [(1989) 1 SCC 715],* ***this Court held that the word "ground" in Section 227CrPC, did not mean a ground for conviction, but a ground for putting the accused***

on trial.

22. *In P. Vijayan v. State of Kerala [(2010) 2 SCC 398] , after extracting Section 227CrPC, this Court in paras 10 and 11 held thus: (SCC pp. 401-402)*

> *"10. ... If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.*
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> *11.* ***At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before***

the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him*."*

23. *In para 13 in P. Vijayan case P. Vijayan v. State of Kerala, (2010) 2 SCC 398, this Court took note of the principles enunciated earlier by this Court in Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, which reads thus: (Prafulla Kumar Samal case [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4:1979 SCC (Cri) 609] , SCC p. 9, para 10)*

"10. ... (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 court 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."

24. *In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227CrPC, and entering into the scope of power under Section 232CrPC, cannot be ruled out as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in Om Parkash Sharma v. CBI [Om Parkash Sharma v. CBI, (2000) 5 SCC 679]. Taking note of the*

language of Section 227CrPC, is in negative terminology and that the language in Section 232CrPC, is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227CrPC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232CrPC, even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232CrPC, available only after taking the evidence for the prosecution and examining the accused.

25. *Even after referring to the aforesaid decisions, we think it absolutely appropriate to refer to a decision of the Madhya Pradesh High Court in Kaushalya Devi v. State of M.P [2003 SCC OnLine MP 672] It was held in the said case that if there is no legal evidence, then framing of charge would be groundless and compelling the*

accused to face the trial is contrary to the procedure offending Article 21 of the Constitution of India. While agreeing with the view, we make it clear that the expression "legal evidence" has to be construed only as evidence disclosing prima facie case, "the record of the case and the documents submitted therewith." (emphasis supplied)

11. In ***Sajjan Kumar vs. CBI*** reported as ***(2010) 9 SCC 368***, the Hon'ble Supreme Court had cautioned against accepting every document produced by the prosecution on face value, and held that it was important to sift the evidence produced before the Court. The Hon'ble Supreme Court had observed that:-

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

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(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, 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 disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

12. 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***

<u>founded on some material. The material must be such as can be translated into evidence at the stage of trial.</u> *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)*

13. 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."

14. 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)*

15. From the afore-quoted decisions, it is abundantly clear that it is not proper for the Court to undertake a threadbare roving enquiry to consider the merits of the case at the stage of considering the discharge application of the accused. The Court is not to assess whether there exist sufficient grounds for conviction, which is a much higher threshold, but rather only to assess whether sufficient grounds for proceeding against the accused are made out or not.

16. In the present case, though the appellant is not named in the F.I.R. but from a perusal of the impugned order it appears that the trial court while rejecting the application for discharge had considered the statements of the witnesses in paragraph nos. 2, 4, 13 and 75 of the case diary, in which the witnesses have categorically taken the name of the appellant and have stated that he was involved in the crime.

17. In the considered opinion of this Court, none of the arguments put forth on behalf of the appellant merits interference. At the cost of repetition, it is stated that the Court, at the stage of considering an application for discharge, is not expected to undertake a meticulous enquiry to assess the probative value of evidence and establish grounds of conviction. What the Court is required to assess is whether there are sufficient grounds for proceeding against the accused.

18. In view of the above, this Court does not find any illegality or infirmity with the impugned order by which the discharge petition preferred by the appellant was rejected by the trial Court. Accordingly, this appeal is dismissed.

19. Needless to state that this Court has not expressed any opinion on the merits of the case and the Trial Court shall proceed with the trial independently based on the merits of the case.

(Sandeep Kumar, J)

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