IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.38182 of 2016

Arising Out of PS. Case No.-170 Year-2014 Thana- KARAHGAR District- Rohtas

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Ajay Kumar Singh son of Shaileshwar Prasad Singh Resident of Brindaban Apartment, Phase-2, A-502, Malahi Pakar, Kankarbagh, P.S.- Kankarbagh, District- Patna.

... ... Petitioner/s

Versus

1. State of Bihar

2. Arvind Kumar son of Ramesh Singh Resident of Village- Mohania, P.S.- Kargahar, District- Rohtas.

... ... Opposite Party/s

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Code of Criminal Procedure, 1973—Section 239—Discharge—rejection of petition—petitioner received two lakh through RTGS, when police after investigation submitted charge sheet under Sections 406 and 420 of IPC—following the guidelines of Sheoraj Singh Ahlawat's case, impugned order not appeared bad in the eyes of law—ld. Trial Court rightly rejected the discharge application of the petitioner—application dismissed. (Paras 9 and 10)

(2013)11 SCC 476—Relied upon

(1992) Suppl. (1) SCC 335—Referred to.

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Appearance :

For the Petitioner/s	:	Mr. Rajani Kant Singh, Advocate
For the O.P. No. 2	:	Mr. Narendra Kumar, Advocate
	:	Mr. Baban Pd. Singh, Advocate
For the Opposite Party/s	:	Mr. Manish Kumar 2, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 16-04-2024

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 27.06.2016 passed in connection with Kargahar P.S. Case No. 170 of 2014

arising out of Trial No. 590 of 2016, where learned Additional Chief Judicial Magistrate-X, Sasaram, Rohtas rejected petition dated 25.01.2016 filed under Section 239 of the Cr.P.C. to discharge petitioner.

3. Opposite Party No. 2 join the present proceedings.

4. The brief facts of the case from the bare perusal of FIR is that one Arbind Kumar filed his written statement on 06.07.2014 before Officer In-charge, Kargahar Police Station mentioning therein that he had to take loan from Punjab National Bank for installing rice mill in his native village and in the month of October 2013 he came in contact with the petitioner who assured him that he will help him in getting the loan from Punjab National Bank, Patna and for that he took Rs. 95,000/- at that time. It is also mentioned by informant in his written application that petitioner also said to transfer Rs. 2,00,000/- in his bank account and that was transferred in the account of the petitioner through

RTGS (Real Time Gross Settlement) and when petitioner did not give any information till 15.05.2014 then he sent a pleader notice, where he refused to return the said amount and did not help him in receiving the loan.

5. It is submitted by learned counsel for the petitioner that petitioner gave a loan of Rs. 2,00,000/- to the father of O.P. No. 2 and to discharge said liabilities of Rs. 2,00,000/- aforesaid amount was transferred to his bank account by O.P. No. 2, whereas the allegation to give cash of Rs. 95,000/- and entire story to secure bank loan with Punjab National Bank for establishment of rice mill is purely an imaginary story as to aggravate the allegations. It is further submitted that no payment of Rs. 95,000/- was ever made to petitioner by O.P. No. 2. It is further submitted that in any case it is a matter of recovery, arises out of loan dispute for which appropriate remedy is available under civil jurisdiction, where present criminal prosecution was brought with oblique and ulterior motive and as such it is

a fit case to be quashed.

6. While concluding the argument learned counsel relied upon the legal report of Hon'ble Supreme Court in the case of **State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335.**

7. Learned APP duly assisted by learned counsel appearing on behalf of O.P. No. 2, while opposing the application submitted that amount of Rs. 2,00,000/- was transferred in the bank account of O.P. No. 2 directly. It is submitted that there is no *prima facie*, evidence in the statement that ever any loan of Rs. 2,00,000/- was paid to the father of O.P. No. 2 by petitioner and it is purely imaginary story for which onus lies on O.P. No. 2. Learned counsel for O.P. No. 2 relied upon the legal report of Hon'ble Supreme Court in the case of **Sheoraj Singh Ahlawat and Others Vs. State of Uttar Pradesh and Another** as reported in **(2013) 11 SCC476.**

8. It would be apposite to reproduce the paragraph no(s). 15, 16, 17, 18, 19 and 20 in the case of **Sheoraj Singh Ahlawat Case (supra),** which reads as under:

> **15.** This Court explained the legal position and the approach to be adopted by the court at the stage of framing of charges or directing discharge in the following words: (*Onkar Nath case* [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] , SCC p. 565, para 11)
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> "*11*. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, *taken at their face value*, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. *What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even* ***strong suspicion*** *founded on*

material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

16. Support for the above view was drawn by this Court from the earlier decisions rendered in *State of Karnataka* v. *L. Muniswamy* [(1977) 2 SCC 699 : 1977 SCC (Cri) 404 : 1977 Cri LJ 1125] ,*State of Maharashtra* v. *Som Nath Thapa* [(1996) 4 SCC 659 : 1996 SCC (Cri) 820 : 1996 Cri LJ 2448] and *State of M.P.* v. *Mohanlal Soni* [(2000) 6 SCC 338 : 2000 SCC (Cri) 1110 : 2000 Cri LJ 3504] . In *Som Nath case* [(1996) 4 SCC 659 : 1996 SCC (Cri) 820 : 1996 Cri LJ 2448] the legal position was summed up as under: (SCC p. 671, para 32)

"*32*. … if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused *might*

have [**Ed.**: The words "might have" and "has" are emphasised in original.] committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused *has* [**Ed.**: The words "might have" and "has" are emphasised in original.] committed the offence. *It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage*."

17. So also in *Mohanlal case* [(2000) 6 SCC 338 : 2000 SCC (Cri) 1110 : 2000 Cri LJ 3504] 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 : 2000 SCC (Cri) 1110 : 2000 Cri LJ

3504] is in this regard apposite: (SCC p. 342, para 7)

"*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 : 2005 SCC (Cri) 415] 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: (SCC pp. 577 *&* 579, paras 18 *&* 23)

"*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 : (2009) 2 SCC (Cri) 1074] , 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: (SCC p. 369, para

17)

"*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: (SCC p. 9, para 10)

"*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."

9. In view of aforesaid factual and legal discussions, as petitioner is recipient of Rs. 2,00,000/- through RTGS (Real Time Gross Settlement) where police after investigation submitted charge-sheet under Sections 406 and 420 of the IPC. Accordingly, by taking a guiding note of para no(s). 15 to 20 of **Sheoraj Singh Ahlawat Case (supra),** impugned order dated 25.01.2016 not appears bad in the eyes of law as passed in Kargahar P.S. Case No. 170 of 2014 arising out of Trial No. 590 of 2016, pending before learned Additional Chief Judicial Magistrate-X, Sasaram, as there are sufficient reasons being strong and grave suspicion exists as to reject petition discharging petitioner under Section 239 of the Cr.P.C.

10. Accordingly, application stands dismissed.

11. Let a copy of this judgment be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
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