

(2012) 09 JH CK 0181

In the Jharkhand High Court

Case No : Criminal Revision No. 584 of 2012

Alok Kumar Singh @ Munna Singh and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 173, 227
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302

Citation : (2013) 2 AJR 51 : (2012) 4 JLJR 287

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : G.K. Sinha and Devesh Krishna, for the Appellant; Gautam Priyadarshi, Advocate For the Informant, for the Respondent

Final Decision : Dismissed

Judgement

H.C. Mishra

1. Both these applications arise out of the same impugned order and as such, they are taken up together and disposed of by this common order. Heard Learned Counsel for the petitioners and learned A.P.P. for the State, as also Learned Counsel for the informant.

2. The petitioners are aggrieved by the order dated 26.06.2012 passed by Smt. Seema Sinha, learned Additional Judicial Commissioner-III, Ranchi in S.T. No. 189 of 2012, whereby the application filed by the petitioners u/s 227 of the Cr.P.C. for discharge has been rejected by the Court below.

3. The petitioners have been made accused in Narkopi P.S. Case No. 1 of 2011 corresponding to G.R. No. 25 of 2011 for the offence under Sections 147, 148, 149, 302, 120B of the Indian Penal Code and Section 27 of the Arms Act, wherein, there is allegation against petitioners Sanjay Singh, Dubble Singh,

Dhirendra Singh, Alok Kumar Singh @ Munna Singh, Siyaber Singh and Mohan Singh that they came on motorcycles and committed murder of the son of the informant by firearms. Petitioner Hira Thakur has not been named in the F.I.R., but his implication has come during investigation of the case. The case was investigated by the police and it appears that the police has submitted charge sheet against these petitioners for the offence under Sections 147, 148, 149, 302, 120B of the Indian Penal Code and Section 27 of the Arms Act and cognizance was taken accordingly. The case was committed to the Court of Session, where the petitioners filed application for discharge, which was rejected by the Court below by the impugned order dated 26.6.2012 holding that the materials available in the case diary make out prime facie case against these petitioners for the offence, as alleged. The case was accordingly, fixed for framing of charge.

4. Learned Counsel for the petitioners has submitted that the petitioners have been falsely implicated in this case. It has been submitted that the petitioners have been named in the F.I.R. only due to previous enmity between the parties and the witnesses have not supported the case naming the petitioners though the occurrence is supported by the villagers. Learned Counsel further submitted that petitioner Hira Thakur is not even named in the F.I.R., but he has been made accused and charge sheet has been submitted against him. Learned Counsel has placed reliance upon a decision of the Hon'ble Supreme Court of India in the case of State of M.P. Vs. Sheetla Sahai & Ors, as reported in 2009 AIR SCW 5514, which is arising out of a case under Prevention of Corruption Act, wherein, it has been held as follows:-

59. In this case, the probative value of the materials on record has not been gone into. The materials brought on record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Mr. Tulsi that where the entire materials collected during investigation have been placed before the court as part of the charge-sheet, the court at the time of framing of the charge could only look to those materials whereupon the prosecution intended to rely upon and ignore the others which are in favour of the accused. The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction is made, sub-section (5) of Section 173 of the Code of Criminal Procedure shall become meaningless.

The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of

the entire materials on record, the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial.

(Emphasis supplied).

5. Further, Learned Counsel has also placed reliance upon a decision of the Hon'ble Supreme Court in the case of P. Vijayan Vs. State of Kerala & Anr., as reported in [2010 (1) East Cr C 227 (SC)], wherein the Supreme Court has taken note of its earlier decision in the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, laying down as follows:-

12.

(4) That in exercising his jurisdiction u/s 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.

6. Placing reliance upon these decisions, Learned Counsel has submitted that in view of the fact that the petitioners were falsely implicated by the informant due to previous enmity and the witnesses have not support the case against the petitioners, it is a fit case, in which the petitioners ought to have been discharged.

7. Learned A.P.P. for the State, on the other hand, has opposed the prayer submitting that there is no illegality and/or irregularity in the impugned order worth interference in the revisional jurisdiction.

8. After having heard Learned Counsels for both the parties and upon going through the impugned order, I find that the Court below has dealt with the points taken by the petitioners elaborately in its order and has come to the conclusion that there are sufficient materials in the case diary making out the case against these petitioners. The Court below has also taken note of the law that when two views are possible, the charge may be framed against the accused persons even on the basis of suspicion. In the present case, I find that there is allegation against six petitioners in the F.I.R. itself and the complicity of petitioner Hira Thakur has been found during investigation of the case. The fact whether the petitioners have been falsely implicated in this case due to previous enmity can be ascertained only after full-fledged trial. Even in Sheetla Sahai's case (supra) it has been held that if upon perusal of the entire materials on record, the court arrives at an opinion that two views are possible, charges can be framed.

9. I do not find any illegality and / or irregularity in the impugned order worth

interference in the revisional jurisdiction. There is no merit in this revision application, which is, accordingly, dismissed. It goes without saying that this order shall not prejudice the petitioners in any manner whatsoever during trial of the case.