
(2016) 01 JH CK 0053
In the Jharkhand High Court
Case No : Cr. Revision No. 6 of 2007

Biru Kumar Bhuiyan

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 397, 401

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323, 325, 341, 379, 436

Citation : (2016) 2 ECRC 206

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Mahesh Tewari, Advocate, for the Appellant; Amaresh Kumar, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J. - Invoking the revisional jurisdiction of this Court under Sections 397 and 401 of the Code of Criminal Procedure (hereinafter referred to as "the Code") the sole petitioner has questioned the legality of the order dated 20.11.2006 passed by Additional Sessions Judge-VI, Dhanbad in S.T. No. 286 of 2006 whereby and where under the petition filed by the petitioner for his discharge under Section 227 of the Code, has been rejected.

2. The facts of the case, which is relevant for the purposes of adjudication of the issue involved in this case, in short, is that at the instance of the informant Amitabh Ghosh, site In-charge, Mackintosh Burn Limited, Katras P.S. Case No. 255 of 2005 was instituted under Sections 147/148/149/341/323/325/307/436 and 379 of the Indian Penal Code with the allegation that on 05.10.2005 at about 2.00 p.m. just after regular blasting operation, this petitioner along with almost 200 persons rushed to the patch equipped with Lathi, rod, lethal weapons and started damaging heavy earth moving machines by their weapons without any specific reason and caused damage to the dumpers, generator set, scooter, cycles etc. and also damaged the valuable materials, machineries and official

documents etc. and when the informant and other officials protested, U.P. Ray was brutally assaulted by them causing severe head injury and Raghu Reddy got fracture in back bone, leg and hand. They were immediately shifted to the hospitals where the doctors found their condition very serious. Where after the aforesaid case was lodged against the petitioner and nine other named accused persons and almost 200 unknown persons. The police after investigation submitted the charge-sheet where after the cognisance of the offence was taken and the case was committed to the court of Sessions. Before the court of Sessions, a petition under Section 227 of the Code was filed at the instance of the present petitioner for his discharge, but the court below finding sufficient materials and evidences available on record and also the prima facie case directed to frame charge against this petitioner and other accused persons, hence, this revision.

3. Learned counsel Mr. Tewari appearing for the petitioner assailing the order impugned as perverse and bad in law, seriously contended that the court below without appreciating the evidence on record in right perspective passed the order impugned without applying judicial mind in a mechanical way. It was also submitted that even the court below failed to consider that the present case was a counter blast of Katras P.S. Case No. 256 of 2005 filed against the present opposite party no. 2 and others of his company and there was absolutely nothing on record to show any overt act or any evidence on complicity of this petitioner in the alleged offence. It was also submitted that even if the entire evidence available on record be taken on its face value, do not constitute any offence against the petitioner.

4. Contrary to the above submissions, the learned counsel representing the State seriously contended that the court below while rejecting the prayer for discharge by the order impugned rightly relied on several Paragraphs of the case diary and the other evidences which creates grave suspicion and prima facie case against the petitioner.

5. Being quite conscious of the fact that the trial would be at its very threshold and that in this application, this Court is dealing with the limited aspect of the petitioner being charged or discharged, I would like to examine the scope of Section of 227 of the Code. The law at this point is succinctly analysed by the Hon''ble Supreme Court in Sajjan Kumar v. CBI; (2010) 9 SCC 368 wherein the Hon''ble Court has observed in Para 19 as under:

"19. It is clear that at the initial stage, if there is strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce 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 the offence, then there will be no sufficient ground for proceeding with the trial."

6. In another case *Rajiv Thapar and Others v. Madan Lal Kapoor*; (2013) 3 SCC 330, the Hon"ble Supreme Court while dealing with the same issue of discharge in a complaint case, lodged at the instance of father of a deceased girl, held in Paragraph-28 as follows:-

"This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held".

7. Thus, from the ratio decided in the above cases, it is amply clear that the court at this initial stage has not to examine the evidence meticulously or a roving enquiry is permissible and even if the accused is successful in showing some suspicion or doubt, it would be impermissible to discharge the accused before trial because it would result in giving finality to the accusations levelled by the person without allowing the prosecution to adduce evidence to substantiate the same. I have also examined the case diary called from the court concerned and the materials available on record and find strong prima facie case and grave suspicion against this petitioner. It is well settled that this is not the stage to see whether the trial will end in conviction or acquittal rather the court has to presume a strong suspicion or a grave prima facie case to proceed with the case if during investigation the statement of the witnesses corroborates the prosecution case.

8. For the reasons aforesaid, I do not find any illegality or impropriety in the order impugned. Accordingly, this revision application is, hereby, dismissed.