
(2016) 01 JH CK 0049
In the Jharkhand High Court
Case No : Criminal Revision No. 152 of 2015

Dilruba Anshari @ Dilruba Hussain and other APPELLANT
Vs
State of Jharkhand RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Penal Code, 1860 (IPC) — Section 153(A), 307, 323, 34, 341, 364, 435, 447, 504

Citation : (2016) 2 ECrC 44

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Shiv Kumar Sharma, 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 (in short "the Code"), the petitioner has questioned the legality of the order dated 04.02.2015 passed by learned Additional Judicial Commissioner-V, Ranchi in Sessions Trial No. 01 of 2014 arising out of Ratu (Nagri) P.S. Case no. 132 of 2008 whereby and where under the petition filed by the petitioner for his discharge under Section 227 of the Code has been rejected.

2. The factual score as depicted in the first information report lodged at the instance of the informant-Jagarnath Mahato, in short, is that the informant is the owner of the land of Khata no. 326, plot nos. 1982 and 1983 having an area 75-75 decimals each situated at Mouza Dhedhe-Tikra, which was provided to him under the "Bhoodan" programme of Ratu Anchal in the year 1970 and after allotment of the said land, his name was mutated and rent receipts were also issued in his name. On 06.07.2008 at about 3.00 P.M., when the informant went to plough his field by a tractor of Bajrang Saw, this petitioner-Dilruba Anshari along with other persons came on motorcycle and opposed the ploughing of the field and abused and assaulted the informant by means of fists, kick and Danda.

It is also alleged that while the accused persons were assaulting him, 8-10 unknown Muslim boys came on a tempo and they all assaulted him with an intention to kill him and they also burnt the said tractor. The informant raised alarm but the accused persons lifted and kept him in a tempo and brought him to Masjid Chowk where other accused persons again assaulted the informant by means of fists, leg and Danda but anyhow, the informant saved his life by entering into a watch shop. The informant received hurt on chest, abdomen, back, head and right elbow where after police came and saved the informant from further assault. The accused persons had also assaulted the driver of the tractor namely Sagar Mahato.

3. It appears from the record that on the same day, two other cases bearing Ratu P.S. Case No. 133 of 2008 and Ratu P.S. Case no. 134 of 2008 were also instituted against the petitioner and other accused persons but in those two cases, police after investigation submitted final form showing the case not true and the petitioner was not sent up for trial but in the instant case, the police submitted the charge sheet against this petitioner and, accordingly, the court took cognizance of offence under Sections 341, 364, 447, 323, 307, 435, 504 and 153(A)/34 I.P.C. and committed the case to the Court of Sessions. The petitioner at the time of framing of charge, filed a petition under Section 227 of the Code for his discharge on the ground that there is no evidence on record to show his complicity in the alleged offence but the court below by the order impugned, rejected the prayer for his discharge. Hence, this revision.

4. Learned counsel appearing for the petitioner assailing the order impugned as perverse and bad in law seriously contended that the court below while rejecting the petition for his discharge has not at all considered the materials available on record in right perspective and also failed to consider that the petitioner was not sent up for trial in two other cases, which were also lodged on the same date and the allegation was almost similar in nature. It was also submitted that in two other cases, this petitioner was found to be controlling mob and trying to bring the situation in normal condition but the I.O. of this cases without appreciating the good instances of this petitioner submitted charge sheet against this petitioner.

5. Refuting the contentions advanced on behalf of the petitioner, it has been submitted by the learned counsel representing the State that there is no illegality or irregularity in the order impugned worth interference in the revisional jurisdiction and finding prima facie case and sufficient material on record, the court below rejected the prayer for discharge. It was also submitted the meticulous examination of the witnesses and roving enquiry into pros and cons of the matter is not at all permissible at this stage.

6. 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 being discharged, I would like to examine the scope of Section 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 proves 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."

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

"28. 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 brainng 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."

8. In the light of the aforesaid guidelines and principles settled by the Hon"ble Supreme Court, it is necessary to consider whether or not in the present case, the court below was justified in refusing to discharge the petitioner. I have gone through the case diary and the order impugned and found that the witnesses examined during investigation have fully supported the prosecution version and the court below in the order impugned has considered several paragraphs of the case diary while refusing to discharge the petitioner. Apparently, there is sufficiency of materials and grave suspicion to proceed against the petitioner and this is not a stage to make a roving inquiry into the matter or to see whether the

trial will end in conviction or acquittal rather the court has to presume a strong prima facie case or grave suspicion to proceed against the petitioner.

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