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Court : Patna

Decided On : Apr-15-2008

Judge : Dharnidhar Jha, J.

Appellant : Rameshwar Yadav and ors.

Respondent : State of Bihar Thru. Cbi

Disposition : Petition dismissed

Judgement :

Dharnidhar Jha, J.

1. I have heard Shri Bishwanath Prasad Sinha, learned Senior counsel appearing for the petitioners and Shri Bipin Kumar Singh, learned Counsel appearing for the C.B.I.

2. Skeletal facts of the case may be noticed. The deceased Rajesh Kumar alias Raju was apprehended with some quantity of illegal liquor in his possession and as per the prosecution story, these five petitioners and others, while apprehending him, assaulted him with fists and sticks. The man was brought to the police lock up and put in there. The further part of the prosecution story is that the deceased was assaulted by accused Ajit Kumar Verma and Ajay Kumar Rai causing injuries to his head and eyes. After investigating the case fully,- the C.B.I, submitted chargesheet against the five petitioners and some others as per details given in

Annexure-A.

3. The post-mortem examination on the dead body was initially held by Dr. Arun Kumar Singh (P.W. 17), Tutor, Department of Forensic Medicine, Patna Medical College Hospital and he noticed some ante mortem injuries on the dead body. Some injuries in some aggravated form were found by the Doctor on or around the left and right eyes, but still Dr. Arun Kumar Singh could not make up his mind to give a clear opinion as regards the cause of death and directed the viscera to be preserved. The viscera was chemically analyzed by the Forensic Science Laboratory, Patna, but the report could not indicate any definite conclusion as regards the death of Rajesh Kumar alias Raju. The investigating agency submitted the documents relating to the medical opinion and examination to the Director, Sanjay Gandhi Post Graduate Institute of Medical Sciences, Lucknow, with a request to constitute a Board of Medical Experts to examine the reports and to finally give an opinion. The opinion was that the death had occurred on account of head injury and other injuries due to assault with hard and blunt substance. After concluding the investigation, the C.B.I. submitted chargesheet which resulted into taking cognizance of the offence under Section 304 read with Section 34 of the Indian Penal Code and subsequently passing of the order dated 18.4.2007 directing framing of the charge under the above Section while rejecting the prayer of the petitioners to discharge them.

4. Shri Bishwanath Prasad Sinha, learned Senior Counsel submitted that even accepting the prosecution case to be true on its face value, the petitioners are alleged to have assaulted the deceased with fists and sticks at the time of affecting his arrest. There is no allegation against the five petitioners that they were, in any way, concerned with assault to Rajesh Kumar alias Raju while he was put into the police lock up. The case is definite that two accused persons, namely, Ajit Kumar Verma and Ajay Kumar Rai were the persons who had caused injuries to the head and eyes of the deceased by assaulting him in the police lock up.

5. It was contended that the deceased was produced initially before the Magistrate and he did not make any complaint of being assaulted or being inflicted with any injury by any of the five petitioners and only complained of some pain while lodged

in the jail resulting into the deceased being examined by the Jail Doctor who did not report finding of any injury and recorded the deceased suffering from giddiness. The examination was held on 19.2.2000 at 9 P.M. The deceased died in the same night on account of which the postmortem examination was held by Dr. Arun Kumar Singh in Patna Medical College Hospital. It was contended that even the chargesheet which is Annexure- A, did not allege that who were the persons out of the five petitioners or any of them, who could have been responsible for causing the death or acting in any manner as to be involved in the incident. It is, as such, contended that the order directing framing of charge and rejecting the prayer of the petitioners for being discharged appears an abuse of the process of the Court and also an example of gross injustice to the petitioners and, as such, needs to be quashed.

6. As against that, learned Counsel for the C.B.I, has referred to some of the statements of the witnesses, like, the mother of the deceased (P.W. 11), Sunil Kumar Yadav (P.W. 5), Vijay Kumar, brother of the deceased(P.W.15), Ranjeet Kumar (P.W. 10) and others who have supported the participation of the five petitioners at the time of the deceased being arrested and had seen him being taken away by the five petitioners. Learned Counsel for the C.B.I, has referred to the evidence of the Doctors, which appears by way of statements of the witnesses, P.Ws. 17,35,43 and 44 for the prosecution, and submitted that the medical report in most of its parts supports the prosecution story and the entire materials justified the order dated 18.4.2007.

7. A huge number of decisions were referred to me by the learned Counsel for the C.B.I., like, those reported in State of Bihar v. Ramesh Singh Superintendents Rememberancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Ors. Radhesyam v. Kunj Bihari and Ors. Kantibhadra Shah and Anr. v. State of West Bengal Smt. Omwati and Anr. v. State through Delhi Admm. (2001) 1 S.S.C. 369 State by Central Bureau of Investigation v. S. Bangarappa and lastly State of Orissa v. Deochandra Nath Padhi in support of his contention and, specially, the contention that even if there is grave suspicion against the petitioners of committing some offence as also the point that prospective defence of the accused could not be considered nor the Court could go in meticulous details

while reading the offence so as to passing an order under Sections 227 and 228 of the Code of Criminal Procedure.

8. The position of law as propounded by the Supreme Court in : State of Bihar v. Ramesh Singh is too well known to be reiterated that if the court finds grave doubt being raised by the materials submitted to it, it could be justified in framing charge. For laying down the above principle, strength was drawn from a terminology appearing in four different provisions of the Cr.P.C, that is, 'sufficient ground for proceeding.' This terminology appears in Sections 203, 204, 227 and 228 of the Cr. P.C. either in negative or affirmative form and it was considered for the first time by the Supreme Court in Chandradeo Singh v. Prakash Chandra Bose and while writing the judgment in Ramesh Singh (Supra) Justice Untwalia drew strength from the judgment in Chandradeo Singh so as to indicating as to what could exactly, be the meaning of the terminology 'sufficient ground for proceeding.'

9. In Chandradeo Singh's case the Apex Court was seized with the question of explaining the scope and ambit of Sections 202, 203 and 204 of the Cr. P.C. in context to a complaint petition and while dealing with the above provisions, the Supreme Court read the above terminology and while so doing noted down that the prospective defence of the accused is never relevant nor the fact that the case may end in acquittal could be relevant for the court which is called upon to decide whether there is sufficient ground for proceeding against the accused and, thus, was required to issue a summons under Sections 204 Cr.P.C. or was to assign reasons for dismissing the complaint under Section 203 Cr.P.C. Learned Counsel for the C.B.I. was highlighting the principle, which was long decided in Chandradeo Singh (supra).

10. It is true that the courts which are hearing cases at the stages of Sections 227 and 228 of the Cr.P.C. are not empowered to enter into the meticulous discussion of the evidence, but it is also another side of the truth, as may appear from Section 228 of the Cr.P.C., that while passing an order the Judge is required to record a definite finding that in his opinion there is ground for presuming that the accused had committed an offence which was exclusively triable by the court of Sessions. If the materials do not justify recording of such finding, then, the Judge has to record

another finding as may appear from Section 228(1)(a) of the Cr.P.C. that the accused does not appear to have committed an offence which is exclusively triable by the court of Sessions and in that case he has to send back the case to the Chief Judicial Magistrate or to any other Magistrate of First Class for trial. If this is the duty of a Judge, as appears from Section 228 of the Cr.P.C., then, this is too much to say that the Judge could not enter into the discussion of the materials.

11. In my considered view the Judge has a duty and quite some jurisdiction and competence for that matter, to consider materials in sufficient forensic details so as to recording the finding as required by him under Section 228 of the Cr.P.C. simply for the reason that he has to record reason on the constitution of a particular offence. If facts are not considered then it may not be possible for a Judge to identify the ingredients of an offence to say as to what offence was made out on facts or, in other words, that no offence was made out on facts which could be exclusively triable by him. I have taken the same view in a recent judgment rendered in the case of Krishna Kumar v. State of Bihar reported in 2008(2) Bihar Law Judgments 27 (PHC). What a Judge has to refrain from doing under Section 277 or 228 Cr.P.C. is not to consider probabilities or improbabilities so as to raising inference in favour of the accused.

12. Now, coming to the facts of the case, the incident is dated 18.2.2000 and it is true that it is in two parts. The first part relates to five petitioners and some others and according to which the petitioners and others were involved in apprehending the deceased Rajesh Kumar alias Raju who was found also in possession of 19 liters of illicit liquor. At the time of passing of an order under Sections 227 and 228 of the Cr.P.C. the court has to record a finding on constitution and commission of offence or offences after considering the record submitted to it by the police or any investigating agency, like, the C.B.I., in the present case. The Judge has to consider nothing else than the record. As such, the Judge could not consider any prospective defence or any other matter which could be pleaded before him by the accused who could very well get an opportunity of hearing at the stages of Sections 227 and 228 of the Cr. P.C. The very part of the story has been supported by various witnesses, as pointed out by learned Counsel for the C.B.I. This part of the story has sufficiently been supported by the oral testimony of the

witnesses and the same also appears supported by the medical report, inasmuch, as by the very first report of Dr. Arun Kumar Singh also indicated the presence of some injuries caused by hard and blunt object.

13. The other part of the story relates to the deceased being assaulted in the lock up by two accused persons Ajit Kumar Verma and Ajay Kumar Rai. The chargesheet indicates that two accused Ajit Kumar Verma and Ajay Kumar Rai caused injuries on his head and eyes. It is not in dispute that head injury was the cause of death but for that, in my considered view, the petitioners could not escape the trial. They have to be tried and their defence has to be judged only when the court has an opportunity to receive evidence in the case and judge them on the prosecution as well as defence arguments. May be that the petitioners could not be involved in an offence under Section 304 of the I.P.C. but assaulting the deceased by fists and sticks could give rise to some sort of commission of some offence for which the trial has to be ordered. Accordingly, I find that the order impugned is not suffering from any illegality or any such defect which could be an example of inherent injustice to the petitioners.

14. This petition appears devoid of merits. The same is accordingly dismissed.

15. However, as I have discussed some aspects of the case which may have some bearing on the merits of the case of the parties on the ultimate result of the trial, I direct the court below not to read any part of it when the trial begins and not to be prejudiced by any of the observations of this Court.

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