

Binod Kumar Singh Alias Binod Singh Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Apr-16-2015

Appellant : Binod Kumar Singh Alias Binod Singh

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Revision No. 609 of 2013 ----- Binod Kumar Singh @ Binod Singh Son of Sri Prasidh Nath Singh, resident of 35, New Bardwari, P.O.-Sakchi, P.S.- Sitaramdera, Jamshedpur, District -East Singhbhum . . . Petitioner --Versus-- State of Jharkhand . . . Respondent For the petitioner : Mr. B.M.Tripathi, Sr. Advocate, M/s. Nutan Kumari Sharma & Naveen Kumar Jaiswal, Advocates For the Respondent-State : Mr. Hardeo Prasad Singh, A.P.P. CORAM: HONBLE MR. JUSTICE RAVI NATH VERMA ----- C.A.V. ON:

09. 04/2015 PRONOUNCED ON:

16. 04/2015 The present Revision Application under Sections 397 and 401 of the Code of Criminal Procedure (in short the Code)has been preferred by the petitioner against the order dated 20.05.2013 passed by the 1st Additional Sessions Judge, Jamshedpur in S.T. No. 182 of 2011 whereby and whereunder the petition filed by the petitioner under Section 227 of the Code for his discharge has been rejected.

2. The petitioner has been made accused in Sakchi P.S. case no.106 of 2008 corresponding to G.R. Case no. 1059 of 2008 for the offence under Sections 307/353/427/109/120(B)/504/34 of the Indian Penal Code and also under Sections 27/35 of Arms Act. In the petition filed in Court below under Section 227 of the Code, the grounds taken were that the petitioner was in jail custody between 12.02.2008 and 17.08.2008 in connection with Sakchi P.S. Case No. 240 of 2007 on the allegation of murder of one Ashish Dey, the Proprietor of Shree Leather, Jamshedpur. Since he was in custody on the alleged date 16.05.2008, he had not taken part in the alleged occurrence and has been falsely implicated almost after two years of occurrence though the F.I.R. was lodged against unknown persons. 2 Subsequent to the filing of present case, the petitioner has been convicted under Section 302 of I.P.C. in Sakchi P.S. Case no. 240 of 2007 and has been sentenced to undergo R.I. for life vide judgment dated 17.09.2011 passed in S.T. No. 227 of 2008.

3. In the present case (Sakchi P.S. Case No. 106 of 2008), the first information report was lodged on the basis of the fardbeyan of one Uday Singh, a Constable deputed at the house of late Ashish Day, the proprietor of Shree Leather, alleging therein that on 16.05.2008 at about 6:45 a.m., the informant was collecting water from the tap situated near the guard room of the house of Late Ashish Dey when all on a sudden, four miscreants riding on two motorcycles came there from Agrasen Bhawan side and made indiscriminate firing pointing upon the police party and fled away. The nearby shop owners, the police guard posted there and other persons assembled there also noticed the miscreants and they could identify them. The miscreants had fired seven rounds from small fire arms. The pellets and empty cartridges were recovered by the informant. The informant suspects that as the murder case of late Ashish Dey was in progress, so to create terror under conspiracy, the miscreants have committed this offence. After due investigation, the police submitted the charge sheet against some of the miscreants but the investigation was kept pending against this petitioner and other accused persons and almost after two years, supplementary charge sheet was submitted on 31.03.2011 against this petitioner. The Court of C.J.M. took cognizance of the offence against this petitioner and other accused, who were absconding and committed the case to the Court of Sessions where the petition under Section 227

of the Code was filed for discharge of the petitioner.

4. Mr. Tripathi, learned senior counsel, has taken the Court through various portion and paragraphs of the case diary relying upon which the Court below rejected the petition for discharge and submitted that on mere perusal of those paragraphs of the case diary, it would appear that the petition for discharge has been rejected 3 without appreciating the contents of the paragraphs. It was also submitted that there is absolutely nothing in those paragraphs of the case diary to show any meeting of mind or hatching the criminal conspiracy by this petitioner when admittedly he was in jail custody on the alleged date of occurrence. It was further submitted that merely on suspicion, as he has been convicted in the murder case of late Ashish Dey, he has been shown as a conspirator, but from the entire materials available on record, there is neither any direct nor indirect evidence to show the complicity of this petitioner in any part of the conspiracy in opening fire upon the informant and other police party, hence the petitioner deserves to be discharged.

5. Refuting the contentions advanced on behalf of the petitioner, it has been submitted by the learned A.P.P. that there is no illegality or irregularity in the impugned order worth interference in the revisional jurisdiction and roving enquiry into the 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 analyzed by the Honble Supreme Court in Sajjan Kumar Vs. CBI [(2010) 9 SCC368] wherein the Honble 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 4 the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In another judgment *State through Inspector of Police Vs. A. Arun Kumar and Anr.* [2015(1) East Cr. C. 450 (S.C.)], the Honble Supreme Court on consideration of the authorities about the scope of 227 and 228 of the Code, held as follows:- (i) The Judge while considering the question of framing the charges under Section 227 of the Cr PC 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. The test to determine prima facie case would depend upon the facts of each case. (ii) 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. (iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is 5 required to be proved beyond reasonable doubt that the accused has committed the offence. (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. (vi) At the stage of Sections 227 and 228, the Court is required to evaluate the materials and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, to sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge

will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

7. It is apparent from the record that as on the alleged date of occurrence, the petitioner was in jail custody, prima facie evidence or the suspicion against him is confined to the conspiracy part only. Whenever a petition for discharge is filed under Section 227 of the Code, the Court has to consider the documents filed with the charge- sheet under Section 173 of the Code and also to consider the strong suspicion or prima facie material on the record. After hearing 6 submissions and examining record, if the Court feels that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing but if the Court finds strong suspicion and prima facie material available on record, which leads the Court to think that there is ground for presuming that the accused has committed an offence, it will not be open to the Court to say that there is no sufficient ground for proceeding against the accused.

8. In view of the authoritative pronouncements and principles laid down in the above cases, the Court has only to consider the broad probabilities of the case, the strong suspicion and the materials produced before the Court. At this stage, the roving enquiry into the pros and cons of the matter and weighing the evidence to see the sufficiency of evidence to convict the accused during trial, is not at all required rather a prima facie case against the accused, if has been made out, that is sufficient to frame charge against the accused. I have gone through the paragraphs of the case diary as mentioned in the impugned order and the material on record including the fact that the trail of murder case of Ashish Dey was in progress, which disclose the grave suspicion against the petitioner. It has come in the case diary that to terrorize the witnesses, the indiscriminate firing was made at the house of Ashish Dey. The Court below while discussing the conspiracy part, has relied on paragraphs 6, 24, 34, 79 and 83 of second supplementary case diary and rejected the petition for discharge as indicated above. This Court under revisional jurisdiction is dealing with the limited aspect of the issue of being charged or being discharged, I am purposely and deliberately steering of making any positive assertions or even referring to certain aspect of the matters lest, any observations made by me, may prejudice the case. Whatever indirect observations

I have made in course of this order are relatable only to the aforesaid limited aspect of interfering with the impugned order. 7 9. On the facts and in the circumstances of the case and having regard to the legal position stated above, I see no good reason to set aside the order impugned. Hence, the revision application is dismissed. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 16th April, 2015 Ritesh/N.A.F.R.

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