

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.18379 of 2019

Arising Out of PS. Case No.-193 Year-2001 Thana- UDWANTNAGAR District- Bhojpur

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Shree Kumar Singh, Son of Late Ram Tawkal Singh, Resident of Village-
Masarh, P.S.- Udwant Nagar, Distt- Bhojpur, Bihar

... ... Petitioner/s

Versus

The Union of India Through Secretary of Customs Ministry of Finance
Dept. Government of India.

... ... Opposite Party/s

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*Code of Criminal Procedure, 1973—Section 227—Discharge petition--
alleged contraband was recovered near the house of the co-accused—
petitioner was a retired Armed Force Personnel and newly elected Mukhiya
when the huge quantity of Narcotic Drugs was recovered—petitioner has no
concerned with the place of recovery, i.e., house—name of the petitioner
came on the basis of whispering of villagers—case of prosecution is based
only on suspicion or presumption then such suspicion or presumption must
be properly explained by the prosecution and must be well founded—
learned trial court passed the order impugned in mechanical manner and
without disclosing the materials which were according to the trial court,
found to be sufficient to frame the charges for the alleged offences against
the petitioner—if two views are equally possible and the court is satisfied
that the evidences produced giving rise to some suspicion only then in the
said circumstance, the accused should be discharged from the alleged
offences and it is a settled position of law that while deciding the prayer for
discharge of an accused, the trial court should not act merely as a post
office or a mouth piece of the prosecution—no any cogent material to link
the petitioner to the alleged offence—impugned order set aside—petitioner
is discharged from all the alleged offences—petition allowed.*

(Paras 5 and 6)

(1979) 3 SCC 4; (2022) 12 SCC 657—**Relied Upon.**

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Raj, Advocate
Mr. Surendra Kumar Singh, Advocate
For the Opposite Party/s : Mr. Ranjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

6 25-02-2025 Heard Mr. Rajeev Ranjan Raj, learned counsel for
the petitioner and Mr. Ranjay Kumar, learned counsel for the
Custom Department.

2. The instant petition has been filed under Section
482 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) for
quashing the order dated 29.10.2018 passed by learned
Additional District and Sessions Judge- X cum- Special Judge,
NDPS Act, Patna in Special Case No. 100 of 2001 relating to
Customs Case No. 108 of 2001 arising out of Udwantnagar P.S.
Case No. 193 of 2001 whereby and whereunder learned Special
Judge has rejected the petitioner’s prayer for discharge made
under Section 227 of the Cr.P.C.

3. Learned counsel appearing for the petitioner



submits that the instant matter relates to the recovery of 650 kg of narcotic material namely, *Ganja* and the recovery is said to have been made on 11.10.2001 but from the entire prosecution story narrated in the final complaint as well as in the initial written information filed by the Custom Department and any kind of the association of the petitioner with the seized narcotic materials does not appear even *prima facie*. As per the prosecution story, the alleged contraband was recovered near the house of the co-accused, Bharat Bhusan Singh @ Lami Singh and the same was found covered with straw but it is an admitted position that the custom officials could not have found out the owner of the seized contraband and in this regard, the main complaint as well as initial written information which can be treated as an FIR may be perused. The petitioner has been made accused mainly on the basis of whispering of villagers but names of the said villagers were not disclosed in the complaint as well as initial information and regarding the place of recovery, the seizure memo is also relevant in which it was mentioned that unclaimed recovered from the place near the house of one Lami Singh at *Masarh* village and with the complaint, the custom department filed a list of witnesses as *Annexure-I* in which the details of 21 persons as witnesses has



been given but among them no name of any villager finds place. Among these witnesses 19 are official persons rest two belong to Patna district who simply accompanied the custom officials to the place of recovery and during the investigation, the investigating officer did not record the statements of any of the cited witnesses. The investigating officer sent the notices under Section 67 of the NDPS Act to the accused persons named in the complaint including the petitioner but did not take any attempt to examine the witnesses, cited and detailed in the witness list. The villagers who were claimed by the custom officials to have whispered and disclosed the names of this petitioner and other co-accused persons as being involved in the commission of the alleged offences were also not examined and even their identity was not disclosed and none of the accused persons, except the petitioner, appeared before the investigating officer to record his statement. But the petitioner appeared and recorded his statement under Section 67 of the NDPS Act in which he fully denied his any role in keeping or smuggling or trafficking the alleged seized contraband. The petitioner is a retired Armed Force Personnel and at the time of recovery, he was newly elected *Mukhiya*. He further submits that as per the complaint, the custom officials were mishandled, assaulted and their



belongings were looted by a large mob consisting of sixty to seventy persons when they were carrying the seized contraband and completing the seizure formalities and regarding that occurrence, Udwantnagar P.S. Case No. 193 of 2001 was registered, though, the petitioner was also one of the accused in that case but he was not sent up by the police and other accused persons who were sent up and faced trial, have been acquitted of the charged offences. The petitioner filed his petition with a prayer to discharge him under Section 227 of Cr.P.C. to which the prosecution filed his rejoinder dated 22.09.2018 in which also accepted the factum of recovery near the house of co-accused, Bharat Bhusan, though, it was mentioned in the rejoinder that there were sufficient materials to frame the charge against the petitioner but none of these claimed materials was disclosed in the said rejoinder. It is lastly submitted by petitioner's counsel that the order impugned is completely mechanical and the trial court simply mentioned in the order that there were sufficient materials on the record to frame the charges but no such material was disclosed or discussed.

4. On the other hand, learned counsel appearing for the Custom Department has argued that the petitioner could not have satisfied the custom officials regarding his presence at a



place other than the place of recovery and there are sufficient materials to show the petitioner's involvement in the alleged offences of NDPS Act. The petitioner despite being the *Mukhiya* of the concerned *Panchayat* failed to discharge his public duty in helping the law enforcement agency to get the traffickers held and he did not give satisfactory answer for acquiring the huge property worth crores of rupees by him despite getting a monthly pension of Rs. 2,000/- which in itself is sufficient to show his indulgence in illegal trafficking of the narcotic drugs which were recovered in the present matter. The seized contraband was recovered near the house of the petitioner and there is sufficient material against him to proceed with the alleged offences.

5. Heard both the sides and perused the order impugned and the relevant materials. The instant matter relates to the recovery of the huge quantity of *Ganja*. As per prosecution story, the alleged contraband is said to have been recovered near the house of co-accused, Bharat Bhusan Singh @ Lami Singh but the prosecution has not taken the plea that the petitioner had possession over the place of recovery or had any connection during the relevant time of recovery and in this regard, initial written information given by the custom officials



to the trial court as well as final complaint and seizure memo are relevant which clearly go to show that the exact person having ownership or possession over the seized contraband could not be located despite best efforts. It has been mentioned in the complaint that as per the information and from the whispering among the villagers it could be gathered that the recovered *Ganja* belonged to this petitioner and co-accused persons but with the complaint there is no material to substantiate the said information and the names of the villagers who whispered and revealed the petitioner's role in the commission of the alleged offences were not disclosed in the entire complaint as well as other relevant documents such as *panchnama* and it appears that merely on the basis of whispering of some undisclosed villagers, the petitioner was made an accused which cannot be deemed to be a valid ground in the eye of law to show the commission of an offence even *prima facie* by such accused. Surprisingly, the investigating officer did not take any pain to find out the said villagers and did not record their statements and the petitioner has been made accused merely on the basis of presumption. Regarding his past conduct the prosecution failed to give any material to justify the prosecution's presumption of the petitioner's involvement in the alleged offences of NDPS Act



and admittedly he was an elected *Mukhiya* at the time of recovery of the alleged contraband of the concerned *Panchayat* and merely on account of the non-cooperation by this petitioner with the custom officials as well as his huge properties as alleged by custom officials, he has been made an accused in the present matter but the same cannot be a ground to make one an accused in the offence relating to the recovery of narcotic materials unless any kind of association of such person with the seized contraband has been shown and the same situation is available in the present matter. Though as per the allegations levelled in the complaint custom officials were attacked by a large mob and their belongings were also snatched regarding which an other P. S. Case was lodged but as per above submission, the petitioner was not chargesheeted in that case and the accused persons chargesheeted in that case, have been acquitted however, the said subsequent incident cannot be a valid ground in the eye of law to implicate the petitioner in the alleged offences of the NDPS Act. Surprisingly, during investigation, the investigating officer did not record the statements of the witnesses cited in the list of witnesses annexed to the main complaint though none of them was claimed to be the witness of the factum of disclosure of petitioner's



association with the alleged contraband.

6. While deciding the prayer for discharge made by an accused, the trial court is bound to appreciate the available evidences though for limited purpose but appreciation must be made at least for finding out whether or not a *prima facie* case against the accused has been made out and where the case of prosecution is based only on suspicion or presumption then such suspicion or presumption must be properly explained by the prosecution and must be well founded. If two views are equally possible and the court is satisfied that the evidences produced giving rise to some suspicion only then in the said circumstance, the accused should be discharged from the alleged offences and it is a settled position of law that while deciding the prayer for discharge of an accused, the trial court should not act merely as a post office or a mouth piece of the prosecution. In this regard, the observations made by the Hon'ble Apex Court in the case of **Union of India vs. Prafulla Kumar Samal and Another** reported in **(1979) 3 SCC 4** are relevant and the same are being reproduced as under:-

“ 10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) *That the Judge while considering the question of framing the charges under Section 227 of the Code*



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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 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."

The aforesaid principles were reiterated by the Hon'ble Apex Court in the judgment passed in the case of **Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey & Ors.** in **S.L.P (Criminal) No. 4599 of 2021** reported in **(2022) 12 SCC 657.**

7. In the present matter, the learned trial court passed the order impugned in mechanical manner and without disclosing the materials which were according to the trial court, found to be sufficient to frame the charges for the alleged offences against the petitioner. If in the present matter in view of the materials available discussed above the petitioner is subjected to face the trial for the alleged offences which are not attracted even *prima facie* against him it will amount to an abuse of the process of law and will cause grave injustice to the petitioner and there is no sufficient ground for proceeding against the petitioner for the alleged offences and he is entitled to be discharged from the alleged offences and his prayer made under Section 227 of Cr.P.C. was wrongly rejected by the learned Trial Court. As such, the order impugned is hereby set



aside and petitioner is discharged from all the alleged offences
and instant petition stands allowed.

(Shailendra Singh, J)

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