

Bhola Yadav @ Bhola Kumar

Vs

The State of Bihar and Others

CRIMINAL MISCELLANEOUS No. 10433 of 2022

28 March, 2024

(Honourable Mr. Justice Prabhat Kumar Singh)

Issue for Consideration

Whether an Order passed by learned Court below in discharging the Opposite parties from their criminal liabilities is correct or not?

Headnotes

Code of Criminal Procedure, 1973—Section 227—Discharge—police submitted Final Form against Opposite parties No. 2 to 5; and learned Court below discharged them from their criminal liability—no direct or indirect evidence about complicity of Opposite Parties No. 2 to 5 in the entire case diary—from the materials which has come during course of investigation it has come that only because of pendency of several cases between the families of the parties, a suspicion has been raised against opposite parties—during investigation, no material has come to show that there was any conspiracy between Opposite Parties No. 2 to 5.

Held: during course of investigation at the relevant time and date of occurrence, Opposite Parties No. 2 to 5 were not present on the place of occurrence nor any evidence has come that there was meeting of mind between the co-accused persons—there was some dispute between the parties, the same cannot be a ground for proceeding against Opposite Parties No. 2 to 5—no illegality or infirmity in the order impugned—petition dismissed.

(Paras 6 to 8)

Case Law Cited

Yogesh vs. State of Maharashtra, (2008) 10 SCC 394; P. Vijayan vs. State of Kerala, (2010) 2 SCC 398—Referred To.

List of Acts

Code Of Criminal Procedure, 1973

List of Keywords

Discharge, Discharge from criminal liabilities.

Case Arising From

From an Order passed by the Court of learned A.D.J.-IV, Barh, in Sessions Trial No. 1034 of 2019 arising out of Ghoshwari P.S. Case No. 66 of 2017 registered for the offence punishable under Sections 302, 120B, 201 and 34 of the Indian Penal Code, 1860 and Section 27 of the Arms Act, 1959 whereby the learned Court below has allowed the petition filed on behalf of Opposite Parties No. 2 to 5 under Section 227 of the Cr.P.C. and discharged the Opposite Party Nos. 2 to 5 from their criminal liability.

Appearances for Parties

For the Appellants: Mr. Manoj Kumar Pandey, Advocate

For the Respondents: Mr. Bharat Lal, APP.

Headnotes Prepared by Reporter: ABHAS CHANDRA, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10433 of 2022

Arising Out of PS. Case No.-66 Year-2017 Thana- GHOSWARI District- Patna

BHOLA YADAV @ BHOLA KUMAR S/o Hari Gop @ Hari Yadav R/o
village- Gilani, P.S.- Sare, District- Nalanda

... .. Petitioner/s

Versus

- 1. The State of Bihar
- 2. Ramawtar Yadav @ Ramotar Yadav S/o Kishori Yadav R/o village- Gilani, P.S.- Sare, District- Nalanda
- 3. Bhuneshwar Yadav S/o Kishori Yadav R/o village- Gilani, P.S.- Sare, District- Nalanda
- 4. Sishupal Kumar S/o Bhuneshwar Yadav R/o village- Gilani, P.S.- Sare, District- Nalanda
- 5. Sube Yadav S/o Gandu Yadv R/o village- Gilani, P.S.- Sare, District- Nalanda

... .. Opposite Party/s

Appearance :

For the Petitioner : Mr. Manoj Kumar Pandey, Advocate
For the State : Mr. Bharat Lal, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 28-03-2024 1. Heard learned counsel for the petitioner and
learned A.P.P. for the State.

2. This application has been filed under Section 482
of the Code of Criminal Procedure, 1973, for quashing of the
order dated 06.01.2022 passed by the court of learned A.D.J.-IV,
Barh, in Sessions Trial No. 1034 of 2019 arising out of
Ghoshwari P.S. Case No. 66 of 2017 registered for the offence
punishable under Sections 302, 120B, 201 and 34 of the Indian
Penal Code and Section 27 of the Arms Act, whereby the



learned court below has allowed the petition filed on behalf of Opposite Party Nos. 2 to 5 under Section 227 of the Cr.P.C. and discharged the Opposite Party Nos. 2 to 5 from their criminal liability.

3. The prosecution case in brief is that on 16.10.2017, this petitioner submitted a written report before the Officer In Charge of Ghoswari Police Station alleging therein that on 15.10.2017 at about 06:00 PM, one Ramu Paswan, resident of Village- Samachak, has come to his brick kiln and took away petitioner's younger brother, namely Sasibhusan Yadav, on a motorcycle. Thereafter, the petitioner's younger brother had gone on the motorcycle but did not return and later on, on the next date, the dead body of the brother of this petitioner was found in a ditch near N.H. 82. The petitioner (informant) suspects that due to old enmity, all the F.I.R. named accused persons, including Opposite Party Nos. 2 to 5, killed the brother of the petitioner. Thereafter, on the basis of the aforesaid written report, the present case was instituted and on investigation, the police submitted final form against Opposite Party Nos. 2 to 5 and not sent up them for trial. But, the learned Magistrate, differing with the police report, has taken cognizance against all the accused persons, including Opposite Party Nos. 2 to 5, for



the offences punishable under Sections 302, 120B, 201 and 34 of the Indian Penal Code and Section 27 of the Arms Act.

4. It is submitted by learned counsel appearing on behalf of the petitioner that the order impugned dated 06.01.2022, has been passed without giving ample opportunity to the petitioner. In this regard, he submits that from bare perusal of the cause list dated 06.01.2022 itself it appears that the next date of hearing was fixed on 09.03.2022 but later on, the same has been omitted by making over writing on the cause list and thereafter the learned court below has passed the impugned order in favour of Opposite Party Nos. 2 to 5 and discharged them from their criminal liability, without considering the materials available on record. He next submits that no ground has been discussed as to why Opposite Party Nos. 2 to 5 have been discharged from the case and as such, the learned court below has committed gross error and the impugned order of discharge dated 06.01.2022 is fit to be quashed.

5. However, learned A.P.P. appearing on behalf of the State, while supporting the order impugned, submits that from bare perusal of the impugned order it is apparent that after discussing the entire materials, hearing the parties and after



giving ample and proper opportunity to the petitioner, the order of discharge has been passed. He next submits that during investigation, the only material that has come against Opposite Party Nos. 2 to 5 is that on the alleged date of occurrence, they were not present at their respective houses. There is no direct or indirect evidence about complicity of Opposite Party Nos. 2 to 5 in the entire case diary. It is next submitted that even the co-accused Ramu Paswan in his confessional statement has not alleged or named Opposite Party Nos. 2 to 5 as conspirators. Even the C.D.R. of the mobile of co-accused Ramu Paswan does not disclose any conversation between co-accused Ramu Paswan and Opposite Party Nos. 2 to 5. He further submits that it has come during investigation that on the alleged date of occurrence, Opposite Party No. 3, namely Bhuneshwar Yadav, who is a Circle Officer and who was posted in Munger and at the relevant time of offence he was deputed as Static Magistrate-cum-Observers in R.D. and D.J. College, Munger, and he collected the answer books and question papers and sealed them and loaded the same on two trucks and submitted it on the examination centre at about 07:30 PM and thereafter, on 16.10.2017, he was very much present in the office. Similarly Opposite Party No. 5, namely Sube Yadav, was present before



the Metropolitan Magistrate, Calcutta, and got bail on 18.10.2017. He further submits that there is no eye-witness to the alleged occurrence. There is no evidence or material or conspiracy between Opposite Party Nos. 2 to 5 and co-accused Ramu Paswan, in whose company the deceased was last seen. He further submits that during investigation it has come that some cases are pending between the family of the deceased and family of Opposite Party Nos. 2 to 5, and on this very ground, suspicion has been raised against Opposite Party Nos. 2 to 5 they they might have killed the brother of the petitioner (informant). There is no sufficient ground for proceeding against Opposite Party Nos. 2 to 5. In this connection, he has also placed reliance on judgments of the Hon'ble Apex Court passed in the cases of *Yogesh v. State of Maharashtra*, reported in *(2008) 10 SCC 394*, and *P. Vijayan v. State of Kerala*, reported in *(2010) 2 SCC 398*.

6. Heard learned counsels for the parties and perused the impugned order. While considering the question of framing of charge under Section 227 of Cr.P.C., Court has undoubted power to shift 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. It is only when 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. In this case, from the materials which has come during course of investigation it has come that only because of pendency of several cases between the families of the parties, a suspicion has been raised against these petitioners. During investigation, no material has come to show that there was any conspiracy between Opposite Party Nos. 2 to 5 on the one hand and co-accused Ramu Paswan. In this case it has also come during course of investigation that at the relevant time and date of occurrence, Opposite Party Nos. 2 to 5 were not present on the place of occurrence, nor any evidence has come that there was meeting of mind between the co-accused persons. Merely because there was some dispute between the parties, the same cannot be a ground for proceeding against Opposite Party Nos. 2 to 5. At best the materials available on record gives rise to suspicion only, as distinguished from grave suspicion. The learned court below has taken note of the entire materials of the case diary, as well as the allegation while discharging the accused persons.

7. In view of the aforesaid facts and circumstances, I



do not find any merit in the present application. There is no
illegality or infirmity in the order impugned.

8. Accordingly, this application is dismissed.

(Prabhat Kumar Singh, J)

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