

2nd Additional Sessions Judge, Benipur, Darbhanga

Sessions Tr. No.418/2019

Order

16.12.2019 The petitioners-accused Mukesh Kumar Jha has filed a petition under section 227 of the Cr.P.C. dated 21.11.2019 for discharging the accused from the case. A rejoinder to this petition has also been filed on behalf of the prosecution on 03.12.2019.

Heard Shri Raushan Mishra, learned counsel for the accused/petitioner and Ld. Addl. P.P. Shri Gauri Shankar Mishra, for the State.

It has been submitted on behalf of the accused petitioners that the petitioners are innocent and have been falsely implicated in this case with entire false and highly absurd and unbelievable allegations. Further submission is that there is absolutely no material to frame charge u/s 448, 326, 307, 354(B), 302 of the IPC against the accused petitioner but the police in collusion with prosecution party, has submitted charge-sheet without evidence on 19.08.2019 and later on the Ld. ACJM, Benipur has taken cognizance on 25.08.2019 and u/s 448, 326, 307, 354(B), 302 of the IPC and finally vide its order dated 03.10.2019 committed the case to the Court of Sessions. The Ld. Counsel for the petitioner submits that there is no eyewitness to the alleged occurrence and the witnesses who were examined in course of investigation are only hearsay witness. He further submits that as per the FIR the alleged occurrence took place on the occasion of 'Janmasthanmi' but on the alleged date of occurrence that is on 03rd September 2018, the petitioner was on his duty in a Private Mall at Gurugram. His further submission before this court that the independent witness namely Ram Vinod Jha and Visambhar Jha at Para 73 & 75 of the case diary have given a entirely different account of occurrence. Hence the Ld. Counsel submits that no prima-facie case is made out against the accused u/s 448, 326, 307, 354(B), 302 of the IPC and he is innocent. Therefore, it has been prayed to allow the petition for discharge of the accused-persons.

On the other hand, the Ld. A.P.P. representing the State has vehemently opposed the prayer of the petitioners and submitted that there is sufficient material to frame charge against the accused-petitioners under section 448, 326, 307, 354(B), 302 of the IPC and the learned court below has rightly taken cognizance against the accused-persons. So petitions of the accused-petitioners is fit to be rejected.

Perused the record. The prosecution case stated in the Fard-beyan of the deceased Gunjan Kumari is that she belongs to a very poor family her parents are residing at Banaras and are working there as daily wagers, whereas she is residing with her two younger sisters at village Bahera, District Darbhanga and are student of a Government School. It is alleged that on 'Janmasthanmi' day in the year 2018, when she along with her younger sisters was sleeping at her house her co-villagers and cousin brother Mukesh Kumar Jha enter into her house in the dead of night and started to molest her younger sister Jyoti Kumari, when the informant objected to it the accused Mukesh Kumar abused the informant in filthy language and fled away. It is further alleged that later on 13.11.2018 the accused Mukesh Kumar again came to their house at around 12 at mid-night and tried to enter their house through the window but upon alarm being raised he fled away. It is further the prosecution case is that on 16.11.2018, when the informant was alone at her house at around 10.30 A.M in the morning accused Mukesh Kumar and his father

Dhirendra and Mother Renu Devi came to her house and caught hold of the informant and they poured Kerosene oil on her and put her on fire. The informant thereafter raised loud alarm, whereupon people residing in neighborhood came to rescue her but till then she sustain severe burn injury. She was taken to Sub-Divisional Hospital, Benipur from there she was refer of DMCH, Darbhanga for treatment and later on from Darbhanga she was refer to Patna for better treatment. On the basis of aforesaid information the Bahera P.S case No. 500/2018 u/s 341, 323, 448, 326, 307 354(B) & 34 of the IPC was lodged and investigation proceeded.

In course of investigation the IO has recorded the restatement of the informant at Para 6, whereas at Para 5, 13 & 14 the statement of witnesses have been recorded, who have fully supported the prosecution case. From perusal of para 27 of the case-diary, I find that the victim Gunjan Kumari in course of her treatment succumbed to her injuries on 23.11.2018. Accordingly Section 302 was added to the FIR, I further find that at Para 27 for the Postmortem report of the deceased has been mentioned from which it appears the deceased died due to 'Septicemic shock as a result of infected burn injuries'. From perusal of the case diary I further find that at Para 49 & 53 there is a supervision note of Sub-Divisional Police Officer, Benipur as well SSP, Darbhanga in which the case has been found true. At para 73, 74 & 75 the statement of some independent witnesses have been recorded who too have supported the factum of occurrence although they have given a different account of the entire occurrence. At Para 92 the police after conclusion of the investigation submitted charge-sheet against the accused Mukesh Kumar Jha whereas kept the investigation pending against the rest of the accused.

After having gone through the material available in the case diary I find that there is sufficient materials available against the accused-petitioner to frame charge u/s 448, 326, 307, 354(B), 302 IPC. Though there are certain contradictions in the evidence of witnesses here and there but it hardly affects the factum of occurrence and a prima-facie case. I further find that there are several rulings passed by the Hon'ble Court, Patna on this point. In one of such rulings reported in 2016(4), PLJR, page-779 it has been held that at the time of charge only requirement is to see as to whether prima-facie case is made out or not. The word "Prima facie", has further been explained that, if there is possibility to draw an interference regarding commission of an offence, it would be sufficient for the court to frame charges. The ruling reported in AIR 1977, page-2018, the Apex court has also held that if there is a 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-persons.

So considering the facts and circumstances as discussed above and in view of the guideline of the Apex court and the Hon'ble Court, I find sufficient ground for framing charge against the petitioners. Accordingly, I find no merit in the petitions of the accused-petitioner and the same stands rejected. The accused-petitioner is directed to appear in person on next date for framing of Charge on 04-01-2020

(Dictated)

(Dharmendra Kumar Singh)
2nd Addl. Sess. Judge, Benipur