

S. C. No.12(01)2021

Contd. Order dt 16.12.23

c) medical evidence has been collected to reinforce the prosecution version.

Juxtaposing these findings with the arguments advanced on behalf of the accused petitioners, I find that there is sufficient ground to proceed against the accused persons at this stage. The arguments advanced by them are debatable and couched in mixed questions of fact and law which shall be addressed at appropriate stage of trial.

That being the position, it is very difficult to hold that the materials available in the record and the case diary, prompts one to discharge the accused persons. These considerations involve dissemination of facts which is not possible at this juncture.

Rather, looking for cues from Hon'ble Courts I stumbled upon a judgment reported in 2010 Criminal Law Journal 968 wherein it was observed that the words, "there is not sufficient ground" means that the judge should come to a conclusion that there is not legal and acceptable evidence or that the allegations do not make out any offence at all. It means that the judge should come to a conclusion that even when the entire case of the prosecution is accepted as correct or the statements made by the witnesses are considered as true, the accused person can not be convicted on such material and no case is made against the accused. The Judge has to consider the broad probabilities of the case and decide whether or not a *prima facie* case has been made out against the accused or not. The Judge is not required to consider the evidence meticulously at this stage. Thus the charge has to be framed where the available material discloses the commission of the offence, which means the charge should not be framed in the cases wherein the material on record does not disclose the ingredients of the offence charged. The standard of test, which is required to be applied at the time of appreciation of evidence while making a judgment should not be applied at the stage of deciding the matter under Section 227 of Cr. P. C. The concept of giving benefit of doubt does not arise at this stage. Similarly, whether the prosecution witnesses are interested or reliable does not arise at this stage. What is to be seen is whether a *prima facie* case from the material on record has been made out or not.

In another precedent reported in (2008)10 S.C.C 394 the Hon'ble Apex Court observed stating *inter alia* that it is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible.

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Applying the principles enshrined therein in the available facts of this instant case, I find *prima facie* that the same disclose commission of the offence alleged at this stage. Indubitably, no other possibility can be discerned at this juncture. As a natural corollary, the petition, dated 04.05.2023 submitted on behalf of the accused persons, is liable to be rejected being misconceived.

Hence,

it is, ORDERED

that the petition dated 04.05.2023 submitted on behalf of the accused persons viz. Sk. Sajjad, Sahin Begum, Md. Faruk Hossain and Sk. Saruk is rejected on contest.

To 22.02.24 for appearance and framing of charge.

All the accused persons are to remain present on the date fixed.

Dic. & cor. by me.

A.S.J, 2nd Court, Sealdah.

Additional Sessions Judge
Fast Track 2nd Court,
Sealdah.
J.O. Code:WB00848.