

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 1072 of 2023

1. Vijay Prakash Sinha @ Bijay Prakash Sinha
2. Harsh VijayPetitioners

Versus

1. The State of Jharkhand
2. Jai Prakash SinhaOpp. Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioners : Mr. Ved Prakash, Advocate
For the State : Mr. Prabir Kr. Chatterjee, Spl. P.P.
For the O.P.No.2 : Mr. Ashok Kumar Jha, Advocate

Order No. 07/ dated 29.02.2024

The instant Cr. Revision has been directed against the order dated 12.07.2023 passed by the learned Judicial Magistrate-XIII, Ranchi in M.C.A. No.7223 of 2022, corresponding to G.R.No.952 of 2022, arising out of Argora P.S. Case No. 59 of 2021 whereby the application for discharge of the petitioner under 239 of Cr.P.C. was partly rejected.

2. The brief facts leading to this Cr. Revision are that the informant had given the written information with the Police Station concerned with these allegations that the informant are four brothers including himself. They are Sheo Prakash Sinha, Vijay Prakash Sinha, Ravi Prakash Sinha and Jay Prakash Sinha. Two brothers Sheo Prakash Sinha and Ravi Prakash Sinha reside on the ground floor and a few days back, his brother Ravi Prakash Sinha had gone to his flat. The rest of his two brothers Vijay Prakash Sinha and Jay Prakash Sinha both reside on the upper floor. On 24.02.2021 the informant was going to the lavatory. He was obstructed by Vijay Prakash Sinha to go there and began to beat him. His wife and his son

both came to rescue Vijay Prakash Sinha and his son Harsh Vijay @ Rishi both had also assaulted them whereby his wife, he and his son sustained injuries. On this written information case crime Argora P.S. Case No. 59 of 2021 was registered under Sections 341/323/354/34 of I.P.C. The I.O. conducted the investigation and statement of the informant was recorded in para 3 of the case diary in which he reiterated all the allegations which were made in the written information itself. In para 6 of the case diary statement of Subham Prakash, son of informant and in para 7 of the case diary statement of Indira Sinha, the wife of the informant was also recorded in which both have corroborated the prosecution story. In para 15 of the case diary statement of independent witness Anita Minz was also recorded who also corroborated the prosecution story. In para 24 of the case diary is the injury report of Jay Prakash Sinha, Shubham Prakash and Indra Sinha.

3. The I.O. after concluding the investigation filed charge-sheet against Vijay Prakash Sinha and Harsh Vijay for the offence under Sections 341/323/354/34 of the Indian Penal Code.

4. The accused persons Vijay Prakash Sinha and Harsh Vijay both had moved the application for discharge before the trial court. The very application was partly allowed by the learned court-below and partly rejected vide order dated 12.07.2023 whereby both the accused were discharged from the offence under Sections 354 of I.P.C.; while the discharge

application was rejected for the offence under Sections 341 and 323 read with 34 of I.P.C.

5. Aggrieved from the impugned order dated 12.07.2023 this Cr. Revision has been preferred on the ground that the impugned order passed by the learned court-below is based on erroneous finding. The civil dispute was also pending between the parties. There was no material on record to substantiate the allegation made in the F.I.R. The impugned order has been passed by the learned court-below without applying judicial mind.

6. I have heard the learned Counsel of parties and perused the material on record.

7. The learned Counsel for the petitioner has submitted that indeed there was a civil dispute between the parties and on petty matter the quarrel arose between them. So far as the injuries are concerned, the same might have sustained on account of falling in the scuffling and there was a separate lavatory of the petitioner and the informant. As such the very basis of the F.I.R. is based on wrong assertions and contended that the learned court-below has not considered on these materials while rejecting the application for discharge of the petitioner for the offence under Sections 341 and 323 of I.P.C. as well.

8. The learned Counsel for the O.P.No.2 and the learned A.P.P. vehemently opposed the contentions made by the learned Counsel for the petitioner and contended that there are

specific allegation in the F.I.R. itself and the same is also corroborated with the statement of the informant and other two injured witnesses, the prosecution story is also supported with medical evidence as well. As such the impugned order passed by the learned court-below is based on the proper appreciation of the material on record.

9. It is the settled law that while disposing the discharge application, the Court has to go through the allegations made in the F.I.R. and the evidence collected by the I.O. during the investigation. While disposing the discharge application, the Court cannot take into consideration the defence averment of the accused until and unless the same overrules the whole prosecution story.

10. It is also the settled law that while disposing the discharge application the appreciation of the evidence, marshalling of evidence is not permissible. While disposing the discharge application, the Court cannot conduct mini trial. If from the allegations made in the F.I.R. and the evidence collected by the I.O., there are sufficient grounds to proceed against the accused for the offence alleged, the Court should decline to allow the discharge application.

11. The Hon'ble Apex Court held in ***Palwinder Singh vrs. Balwinder singh (2008) 14 SCC 504:***

13. Having heard the learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of

the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can also be framed on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] wherein it was held as under: (SCC p. 579, para 23)

“23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case [Satish Mehra v. Delhi Admn., (1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

12. The Hon'ble Apex Court held in ***Sanghi Brothers (Indore) Pvt. Ltd. vrs. Sanjay Choudhary & Ors. (2008) 10 SCC 681:***

11. Sections 227, 239 and 245 deal with discharge from criminal charge. In State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. (underlined [Ed. : Herein italicised.] for emphasis) The court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. (See Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [(1989) 1 SCC 715 : 1989 SCC (Cri) 285] and State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684 : 1995 SCC (Cri) 266].)

13. The Hon'ble Apex Court also held in ***Rukmini Narvekar vrs. Vijaya Satardekar & Ors. A.I.R.2009 SC 1013:***

38. In my view, therefore, there is no scope for the

accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi case [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] by the larger Bench therein to which the very same question had been referred.

14. The Hon'ble Apex Court held in ***Central Bureau of Investigation vrs. Mukesh Pravinchandra Shroff & Ors (2010) 3 SCC Cr. 315:***

“The appreciation of evidence, at the stage of discharge is impermissible what is required is to be seen is whether there are sufficient grounds to proceed against accused.”

15. In the F.I.R. itself the allegations are made by the informant that dispute arose on use of the common lavatory between the informant and the accused since the accused had obstructed to the informant to pass by the side of him just to use the lavatory and on the very issue the accused Vijay Prakash Sinha had assaulted him. When his wife and son both came to rescue him, the accused Vijay Prakash Sinha and his son Harsh Vijay both had assaulted to the son and wife of the informant also whereby all the three sustained injury. These averments made in the F.I.R. are also supported with the statement of the informant Jay Prakash Sinha and statement

of Subham Prakash, son of the informant and Indira Sinha wife of the informant. All the three are the injured witnesses and their statement under Section 161 of Cr.P.C. are also corroborated with the injury report of all the three which is shown in para 24 of the case diary.

16. In view of para 24 of the case diary, the injured Jay Prakash Sinha had sustained four injuries, third was brownish coloured abrasion over lateral surface of upper part of leg left and fourth was complain of backache. Likewise Subham Prakash had also sustained three injuries which are (1) A Brownish Bruise $\frac{1}{2}$ " x $\frac{1}{2}$ " over left side of vertical surface of roof of neck (2) $\frac{1}{4}$ " abrasion over right knee (Brownish) and (3) $\frac{1}{2}$ " abrasion over left knee (Brownish). Indira Sinha had also sustained three injuries which are (1) complain of headache, bodyache (2) complain of pain back of neck (3) complain of diminished version regarding complain No. (1) & (2) No obvious external injury. For complain No. (3) Eye surgeon's opinion is needed. The injury of all the three injured witnesses have been opined to be simple in nature caused by hard and blunt substance.

17. The learned Counsel for the petitioner has submitted that the ingredients of the offence under Sections 341 and 323 are not attracted. Herein it would be relevant to give certain statutory provisions of I.P.C.

319. Hurt.-whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

323. Punishment for voluntarily causing hurt.- Whoever, except in the case provided for by Section

334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

339. Wrongful restraint.- Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

18. From the very perusal of the allegations made in the F.I.R. and the evidence collected by the I.O. the ingredients of Section 339 are attracted because the informant was voluntarily obstructed by the accused persons to proceed to use the lavatory to which he has right to use. As such the wrongful restraint was caused to the informant.

19. So far as the offence under Section 323 is concerned, all the three injured had sustained injuries which was simple in nature caused by hard and blunt object. So far as the act of the petitioner in causing the simple hurt is concerned, same is found voluntarily as when the informant was being assaulted, his wife and son came to rescue both were also assaulted by the petitioner Vijay Prakash Sinha and his son Harsh Vijay as well. As such, the contention of the learned Counsel for the petitioner that there was no criminal intent to cause the simple hurt is not found sustainable.

20. In view of the submissions made and the material on record, the impugned order passed by the learned court-below by which the discharge application of the petitioner for the offence under Sections 323 & 341 of I.P.C. has been rejected

bears no infirmity and needs no interference. Accordingly, this Cr. Revision deserves to be dismissed.

21. This Cr. Revision is hereby **dismissed**. The impugned order passed by the learned court-below is **affirmed**.

22. It is made clear that any observation made herein shall not affect the merits of the case.

(Subhash Chand, J.)

P.K.S./A.F.R.