
(1991) 07 PAT CK 0001

In the Patna High Court

Case No : Criminal Revision No. 255 of 1990 (R)

Abdul Moquim Khan

APPELLANT

Vs

The Sate of Bihar

RESPONDENT

Date of Decision : 24-07-1991

Acts Referred:

Citation : (1991) 07 PAT CK 0001

Final Decision : Allowed

Judgement

S. Hoda, J.—This revision application u/s 397 read with Section 401 of the Code of Criminal Procedure has been presented by the Petitioner for setting aside the order dated 22.8.90 passed by 6th Additional District and Sessions Judge, Dhanbad in session trial No. 127/84 by which he has rejected the petition filed by the Petitioner for discharging him from charges against him u/s 302/ 120 (B) of the Indian Penal Code.

2. The fact which emanates from the fard beyan is that on 9.1.82 deceased Ayodhya Pd. Singh who was an employee of the Tata Iron and Steel Company Limited working as cabin men's attendance clerk at its Sijua Colliery was going to Sijua Station to catch train for going home. His son the informant, Ramdas also went with him upto Bhelatand Chowk. As the deceased could not get any Conveyance to go to the station the informant returned back leaving his father alone to proceed to the station on foot. At about 10 30 P.M. A.P. Singh, a Security Officer, of the Tata Sijua Coal Mines, came to the residence of the informant and informed him that his father had been shot dead and the body was lying on the road near the house of Jagdeo Pasi at Sijua. On receiving this information the informant along with the Security Officer and few other persons went at the spot and found his father lying dead. The deceased's hand bag, Chappal and money all were intact in his possession. It was further alleged that about 8 months back chargesheet was submitted against the deceased in connection with theft of some iron materials belonging to the Tata Iron and Steel Company and the main person behind the initiation of departmental proceeding

was one I. Vishwa, a Security Officer of the said Company. The said chargesheet was submitted allegedly on the basis of a report made by the Petitioner and the enquiries were to commence in that proceeding in which I. Vishwa and the Petitioner were to be examined as the management's witnesses. In the fardbeyan, it was also alleged that the deceased had threatened the Petitioner and I. Vishwa that he would make public various omissions and commissions committed by them against the interest of the Company if they proceeded to take any action against him. On behalf of I. Vishwa and the Petitioner one Shamim Khan a local Mukhiya had approached the deceased and threatened him of dire consequences if he disclosed anything against them. Further it was also alleged that on the date of occurrence when he had gone to Bhelatand Hospital, along with his father they met I, Vishwa there who enquired from his father about his programme of going home. According to the informant deceased had no enmity with any body else except the Petitioner and I. Vishwa and as such he had suspicion against them and Shamim Khan. On the basis of the aforesaid facts Jorapokhar P.S. Case No. 6/82 was registered against unknown person, investigation of the case was conducted by the police and ultimately chargesheet against the Petitioner and I. Vishwa was submitted u/s 302/120 (B) I.P.C.

3. Mr. Laheri, learned senior Counsel appearing for the Petitioner, has contended that on perusal of the record of the case and the relevant documents, it is evident that there is no sufficient ground for proceeding against the Petitioner.

4. It is well settled that the charge u/s 302 read with Section 120 (B) of the I.P.C could be framed against the accused , provided the record of the case and documents submitted therewith prima facie support charge and at least raises strong suspicion against the accused.

5. In "Circumstantial Evidence" by Wills 6th Edition, it has been pointed out that circumstantial evidence means the evidence afforded not by the direct testimony of an eye witness to the fact to be proved but by the bearing upon that fact or other and subsidiary fact which are relied upon as inconsistent with any result other than truth of the principal fact. In the case of Hukam Singh Vs. State of Rajasthan, , the Supreme Court has held that in cases dependent on circumstantial evidence in order to justify the inference of guilt all the incriminating facts and circumstances must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

6. In case of State of Karnataka Vs. L. Muniswamy and Others, , while considering the scope of section 227 of the Code of Criminal Procedure, it was observed that "it is clear from the provision that the sessions Court has the power to discharge an accused, if after perusing the record of hearing the parties, he comes to the conclusion, for reason to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the sessions Judge to record its reason is to enable the superior Court to examine the correctness of reasons for which the Sessions Judge has

held that there is or is not sufficient ground for proceeding against the accused. The High Court, therefore, is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case."

7. Yet Anr. case is reported in Union of India (UOI) Vs. Prafulla Kumar Samal and Another, . The Supreme Court laid down following principles:

(1) That the Judge while considering the question of framing the charges u/s 227 of the Code has 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 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 accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 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 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.

8. Where the circumstances are susceptible of two equally possible inferences, the inferences favouring the accused rather than the prosecution should be accepted as has been held in the case of Ram Das Vs. State of Maharashtra, .

9. In the background of the principle of law laid down by the Supreme Court, it has to be seen in the present case whether on the fact and material available on the record the framing of the charge against the Petitioner is justified.

10. In paragraphs 9, 10 and 14 of the case diary, the statement of Jagdeo Pasi, Chasa Choudhary and Bhuneshwar Singh have been recorded. From perusal thereof, it appears that they have stated that they heard the sound of two rounds of firing and seen two persons fleeing away in the opposite direction, whom they could not identify.

11. In paragraph-105 of the case diary statement of Abdul Rashid has been recorded. On the date of alleged occurrence, he was employed in Tata Sijua

Colliery. He has stated in his statement that about one year before the alleged occurrence the deceased had brought an iron KHUL in his workshop for some repair. On the same night, the Petitioner had visited his workshop and had seized his iron khul. He has further stated that one Shamim Mukhiya and Anr. Security officer, Vishwa Saheb after a few days had visited the workshop of the accused and had tried to influence him to manipulate his statement and had been coerced and compelled by them to say that the Petitioner had not visited his workshop on his own initiative rather, he had been informed about the iron khul by Abdul Rashid.

12. In paragraph 126 of the case diary there is further statement that the deceased used to prepare show cause reply for the staff against whom chargesheets were submitted by the Security department, and as such this had become a cause of annoyance for the Security Inspector and the Security Officer. It also appeared that during the house search of the deceased, several papers were found from which it transpired that the deceased had been collecting several valuable materials on the basis of which both the accused persons could have been proceeded against for their several acts of omissions and commissions.

13. The aforesaid facts are the only materials on the record of the case against the Petitioner. Learned Counsel, has, therefore submitted that no case whatsoever on the basis of such material was made out for the trial of the Petitioner. It was also submitted that even if the facts available in the case diary be accepted as true, no case is made out against the Petitioner. On the other hand, Mr. D.K. Sarkar, learned Counsel appearing for the State has submitted that the circumstances mentioned above raise strong suspicion against the Petitioner regarding his involvement in the crime leading to the murder of Ayodhya Pd. Singh.

14. From the materials discussed above, it appears that whatever evidence has been collected in the course of investigation that relates to I. Vishwa and not the Petitioner.

15. The only circumstance against the Petitioner that appears from the investigation is that certain papers had been found from the house of deceased from which it transpired that the deceased was collecting several valuable materials on the basis of which the accused person could have proceeded against for the several acts of omissions and commissions. There is no whisper as to what was the commission and commission committed by the Petitioner nor there is any mention of the details of the documents to show that the Petitioner was in any way involved in that.

16. The next question that arises for consideration is whether the evidence or circumstance available on the record to establish that the Petitioner was a conspirator or there was a conspiracy between the Petitioner and the accused to murder the deceased.

17. In order to establish the charge of conspiracy, there must be evidence and

circumstance to show (1) That there was an agreement between the persons who are alleged to have conspired (2) That the agreement should be (1) for doing any illegal act, or (II) for doing by illegal means an act which may in itself be illegal. The Supreme Court in V.C. Shukla and Others Vs. State (Delhi Administration), observed that:

In order to prove criminal conspiracy, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in a decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire, but a conspiracy can be inferred even from" circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. The prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt.

18. In paragraphs 9, 10 and 14 of the case diary, the only statement is that two rounds of firing were heard and two persons were seen fleeing away who were not identified. From the statement made in paragraph 105 of the case diary it only appears that the Petitioner had visited the workshop of the deceased and seized iron khul and that one Shamim Mukhiya and Anr. accused, Vishwa Saheb after few days visited the workshop of the accused and tried to influence the witness to manipulate his evidence. From paragraph-126 of the case diary, it appears that the deceased used to prepare show cause reply for the staff against whom charge sheets were submitted which had caused annoyance for the Security Inspector and Security Officer. The aforesaid facts, if taken to be true, only create some suspicion which cannot be said to be sufficient nor so strong to justify framing of the charge. Another circumstance which has been taken into consideration is that during search conducted in the house of the deceased some papers were found from which it appears that the deceased had been collecting several valuable materials on the basis of which the Petitioner and other co-accused could have been proceeded against for their several acts of omissions and commissions. This in my view is a mere conjecture as neither any omission or commission is said to have been committed on the part of the Petitioner has been enumerated nor there is detail of documents to show as to in what way the Petitioner was connected for the omission and commission alleged against him. This also, in my view, is too vague a circumstance so as to fasten the guilt of conspiracy. The Supreme Court has repeatedly cautioned that it is only a strong suspicion which may justify the trial of an accused.

19. For the reasons mentioned above, I am satisfied that there are no sufficient grounds for proceeding against the Petitioner.

20. In the result, this application is allowed and the impugned order passed by 6th Additional District and Sessions judge, Dhanbad (sic) dated 22.8.90 is hereby quashed. This criminal revision application is allowed and the framing of the

charge against the Petitioner is hereby quashed.