

(2018) 12 RAJ CK 0344

In the Rajasthan High Court

Case No : Criminal Revision No. 1239 Of 2017, 353 Of 2018

Ajay Rinwa And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 109, 120B, 148, 149, 302, 307, 323, 325, 341, 427, 450
Code Of Criminal Procedure, 1973 — Section 161, 227, 228, 319, 438, 482
Constitution Of India, 1950 — Article 226

Citation : (2018) 12 RAJ CK 0344

Hon'ble Judges : Pankaj Bhandari, J

Bench : Single Bench

Advocate : S.S. Hora, T.C. Sharma, Rajpal Dhankar, Sushil Pujari, Sushil Pujari, S.S. Hora, T.C. Sharma, Rajpal Dhankar, Rinesh Gupta, Aniket Sharma, Sudesh Saini

Final Decision : Allowed

Judgement

1. Petitioner-Ajay Rinwa has preferred Criminal Revision Petition No.353/2018, aggrieved by order dated 25.01.2018 passed by Additional Sessions Judge, Fatehpur Shekhawati, District Sikar in Sessions Case No.06/2016, whereby charges have been framed against the petitioner under Section 148, 450, 427, 341, 323, 325, 302 read with Section 149, 307 read with Section 149, 120-B & 109 of I.P.C.

2. Complainant-Anoop Kumar Dhand has preferred Criminal Revision Petition No.1239/2017, aggrieved by order dated 09.06.2017 passed by Additional Sessions Judge, Fatehpur Shekhawati, District Sikar in Sessions Case No.06/2016, whereby the Court below partly allowed the application under Section 319 Cr.P.C. and refused to take cognizance against respondents No.2 to 8. Since both the Criminal Revision Petitions arise out of Sessions Case No.06/2016, these Criminal Revision Petitions are being decided by this common order.

3. It is contended by counsel for the petitioner-Ajay Rinwa in Criminal Revision Petition No.353/2018 that matter is of year 2008. Police after due investigation submitted negative final report against the petitioner, on the ground that he was at Hyderabad on the date of occurrence. Police got the matter verified from the Airport Authority as well as Hotel, where the petitioner stayed along with Madan Mali and Vijay Kumar.

4. It is also contended by counsel for the petitioner that the Court below while framing charges had not taken note of the plea of alibi of petitioner and the fact that Police after due investigation and verification had come to the conclusion that petitioner was at Hyderabad at the time of occurrence. It is argued that Court below was not justified in framing charges against the petitioner.

5. It is further contended that Police while submitting charge-sheet and negative final report against the petitioner merely mentioned that petitioner was not present at the place of occurrence. The documents pertaining to plea of alibi were not submitted with the charge-sheet, hence, the petitioner withdrew his petition preferred against allowing of the application under Section 319 Cr.P.C., qua petitioner.

6. Counsel for the petitioner has placed reliance on (2008)14 SCC Page 1, "Rukmini Narvekar vs. Vijaya Satardekar & Ors." wherein, the Apex Court held that hearing the submissions of the accused do not mean affording opportunity to the accused to file material. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the Police. The Apex Court further held that width of the powers of the High Court under Section 482 Cr.P.C. and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court can make any order as may be required to secure the ends of justice and to prevent abuse of the process of any Court.

7. It is contended that after Revision Petition was dismissed as withdrawn, petitioner applied under the RTI Act and has obtained documents which establishes that petitioner was not present at the place of occurrence but was at Hyderabad. It is also contended that case of petitioner is akin to that of Madan Mali and Vijay Kumar against whom Court below has not taken cognizance under Section 319 of Cr.P.C.

8. It is further contended that powers which can be exercised by the High Court under Section 482 Cr.P.C. and Writ jurisdiction can be exercised by the High Court in Revisional jurisdiction as well. In support of the above contentions, counsel for the petitioner has placed reliance on (2011) 3 Supreme Court Cases 351, "Harshendra Kumar D. vs. Rebatilata Koley & Ors." It is also contended that documents which are collected by the Investigating Agency can be considered by the Court at the time of charge arguments, reliance in this regard has been placed on (2018) 2 Supreme Court Cases 93, "Nitya Dharmananda Alias K. Lenin & Anr. vs. Gopal Sheelum Reddy."

9. Counsel for the complainant and learned Public Prosecutor have opposed the Revision Petition. Counsel for the complainant has contends that statement of witnesses have been recorded and they have shown the presence of the petitioner at the place of occurrence.

10. It is contended by counsel for the complainant that petitioner has already preferred a Criminal Revision Petition assailing the order vide which application under Section 319 Cr.P.C. was allowed and has withdrawn the petition, now he cannot challenge the order vide which charges have been framed. It is also contended that petitioner's name is appearing in the statement recorded under Section 161 Cr.P.C. and in the Court statement, hence, the Court below has not committed any error in allowing the application under Section 319 of Cr.P.C. and framing charges against the petitioner.

11. With regard to plea of alibi, it is contended that any one can purchase the ticket in the name of any person, purchase of ticket does not establish that the petitioner boarded the flight from Jaipur to Hyderabad and was at Hyderabad, as no record was collected by the Police with regard to presence of the petitioner at Hyderabad.

12. With regard to not taking cognizance against Madan Mali and Vijay Kumar, who are stated to have boarded the flight with petitioner, it is contended that respondent has filed a separate Revision Petition challenging the order of the Court below vide which cognizance has been taken only against the petitioner and not against the other co-accused.

13. It is also contended that in Criminal Miscellaneous Bail Application No.12560/2017 under Section 438 Cr.P.C. filed by the petitioner-Ajay Rinwa, it was contended by the counsel appearing on behalf of the petitioner-Ajay Rinwa that petitioner is ready to surrender before the trial Court and face the trial. Bail application of petitioner under Section 438 Cr.P.C. was disposed of by the High Court, with the direction that in case petitioner surrenders before the trial Court, he be released on bail subject to the satisfaction of the Court below. It is argued that once the petitioner has stated before the High Court that he is ready to face trial, he cannot now challenge the charge order.

14. In Criminal Revision Petition No.1239/2017, complainant has challenged the order dated 09.06.2017. It is contended by counsel for the petitioner-complainant that name of respondents No.2 to 8 is appearing in the statement of witnesses recorded before the Court below, therefore, there was no justification in not taking cognizance against the respondents No. 2 to 8. It is contended that role of respondents No.2 to 8 is akin to that of Ajay Rinwa, against whom Court below has taken cognizance.

15. Counsel appearing for the accused-respondents No.2 to 8, have vehemently opposed the Revision Petition. Their contention is that from the statement of witnesses, it is revealed that due to prior enmity, name of respondent was mentioned in the F.I.R. Complainant-Anoop Kumar Dhand himself was examined

as PW-1 who has deposed before the Court below that Rakesh Matoliya S/o Shankar Lal, Sunil S/o Jagdish Prasad and Jitesh Sharma S/o Banwari Lal were not present at the time of occurrence. It is also contended that out of four witnesses examined by the prosecution, two witnesses have turned hostile. Plea of alibi of all the respondents No.2 to 8 was accepted by the Police and negative final report was submitted merely because witnesses have deposed that they were present at the time of occurrence, the investigation and verification done by the Police with regard to plea of alibi, cannot be over-looked.

16. It is further contended that no overt act is assigned to any of the respondents and general allegations are levelled against 25 to 30 persons. Even in the statement recorded the injured witness has not assigned any overt act to the present respondents No.2 to 8. The Court below, therefore, was justified in rejecting the application under Section 319 Cr.P.C. qua the respondents No.2 to 8.

17. I have considered the contentions.

18. The first moot question before the Court is as to whether after withdrawing of the Revision Petition challenging the order under Section 319 Cr.P.C., as also whether after stating before the Court that accused is ready to surrender and face the trial, accused can challenge the order vide which charges have been framed.

19. The second moot question is as to whether at the time of framing of charges, Court below is required to see the defence of the accused and consider the plea of alibi.

20. As far as first question is concerned, taking of cognizance while allowing application under Section 319 Cr.P.C. and not discharging the accused under Section 227 Cr.P.C. and framing of charges under Section 228 of Cr.P.C., run on different footings.

21. The contention of counsel for the accused petitioner before the High Court in bail application under Section 438 Cr.P.C. that he is ready to surrender and face trial, does not imply that he has given up his right to challenge the order of charge. This Court, therefore, can go into the question of legality, propriety and correctness of the order passed by the Court below while not discharging the accused and framing charges against the accused.

22. Coming to the second question as to whether Courts are required to see the defence documents, it has been held by a catena of judgments of the Apex Court that at the time of framing of charges, the defence documents is not to be looked into, however, the Apex Court in the case of "Rukmini Narvekar vs. Vijaya Satardekar & Ors." (supra) has held that High Court is free to take into consideration the material that may be produced on behalf of the accused to arrive at a decision whether charges framed could be maintained. The Apex Court observed that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if

such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

23. In the present case, in the charge-sheet itself, Police had submitted negative final report and had taken into consideration the plea of alibi of the petitioner as well as respondents in Criminal Revision Petition No. 1239/2017. Police had verified from the Airport Authority and the Hotel about Ajay Rinwa, Madan Mali and Vijay Kumar having boarded the flight from Jaipur to Hyderabad in the morning of the fateful day. Their presence in the Hotel at Hyderabad and for that very reason they have submitted negative final report against Ajay Rinwa, Madan Mali and Vijay Kumar.

24. Section 227 of Cr.P.C. gives a right to the accused of being heard on the question of discharge. The wording of Section 227 of Cr.P.C., empowers the Court to discharge the accused, if after hearing the submissions of the accused and the prosecution, the Judge considers that there is not sufficient ground for proceeding against the accused. The taking of cognizance against the accused does not debar the Court from discharging an accused if there is no sufficient ground for proceeding against the accused.

25. The contention of counsel for the complainant that after withdrawal of the Revision Petition challenging the order of cognizance taken by the Court below while allowing the application under Section 319 Cr.P.C., do not have any force. While exercising the revisional jurisdiction, this Court can look into legality, propriety and correctness of the order passed by the Court below. The Court below while passing the order vide which charges have been framed against the petitioner Ajay Rinwa, has not considered the negative final report and the reasons for submission of negative final report i.e. plea of alibi.

26. The Court below has further ignored the fact that petitioner along with Madan Mali and Vijay Kumar have boarded the flight from Jaipur to Hyderabad on the fateful day in the morning and were not present at the time of occurrence. Documentary proof has to be given weightage over ocular evidence, more particularly when no overt act is assigned to Ajay Rinwa and respondents No.2 to 8 of Criminal Revision No. 1239/2017 and there are general allegations against 25 to 30 persons. Case of the petitioner Ajay Rinwa is similar to that of Madan Mali and Vijay Kumar who have boarded the flight from Jaipur to Hyderabad and were at Hyderabad, as per the documents annexed by the petitioner in the Revision Petition and as per the verification done by the Police with regard to plea of alibi.

27. The present case is of year 2008 and cognizance against the petitioner has been taken in the year 2017 and now charges have been framed in the year 2018. Merely because witnesses have stated that petitioner was also present at the place of occurrence, the same cannot be made a ground for framing charges against the petitioner, more particularly when the Police after due verification has accepted the plea of alibi of petitioner and there is documentary evidence to the

effect that petitioner was not present at the place of occurrence.

28. Consequently, the Criminal Revision Petition No.353/2018 preferred by the petitioner-Ajay Rinwa, is allowed and the Criminal Revision Petition No.1239/2017, preferred by the complainant-Anoop Kumar Dhand, is rejected. The order vide which charges have been framed against petitioner Ajay Rinwa deserves to be quashed and set-aside.

29. Stay applications stand disposed.

30. Copy of this order be placed in the connected file.