
(2015) 05 AHC CK 0016
In the Allahabad High Court
Case No : Criminal Revision No. 1719 of 2015

Ammar Kazim

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 173(8), 209, 227
Penal Code, 1860 (IPC) — Section 120B, 120-B, 34, 406, 419

Citation : (2015) 90 ALLCC 384

Hon'ble Judges : Ranjana Pandya, J

Bench : Single Bench

Judgement

Ranjana Pandya, J.—Heard Mr. Satish Trivedi, learned Senior Advocate assisted by Mr. Araf Khan and Mr. Lihazur R. Khan, Mr. M.A. Haq, learned counsel for the revisionist and learned AGA for the State.

2. This criminal revision has been preferred against the order dated 26.02.2015 passed by the Civil Judge (Senior Division)/Additional Chief Judicial Magistrate, Kaushambi in Criminal Case No. 2672 of 2014 (State of U.P. v. Mohd. Iqbal Mahmood Qazim and another) arising out of Case Crime No. 25 of 2013, under sections 120-B and 506 IPC in reference and context to sections 419, 420, 467, 468, 471 IPC, PS Manjhanpur, district Kaushambi, dismissing the discharge application dated 05.12.2014 of the revisionist holding that charges be framed.

3. The case in brief is that an FIR was lodged by means of an application under section 156(3) Cr.P.C. by the complainant on the basis of which investigation began. After investigation, the Investigating Officer submitted a final report in the matter.

4. Feeling aggrieved, the complainant filed a protest petition, which is said to be pending disposal. In the meanwhile orders were passed for further investigation as is evident from annexure-8, in which Ram Charan Verma of PS Manjhanpur, Kaushambi has requested the Chief Judicial Magistrate to pass orders to direct for handing over the entire case diary and final report, on which Chief Judicial

Magistrate passed orders that photocopy be kept on record and the original record be handed over to the police. After further investigation charge sheet was submitted against the revisionist and Mohd. Iqbal Mahmood Qazim.

5. Mohd. Iqbal Mahmood Qazim and Ammar Kazim, the revisionist preferred an Application u/s. 482 Cr.P.C. No. 48819 of 2014, which was decided on 27.11.2014, in which following orders were passed:

"In the absence of any of the grounds recognized by the Apex Court which might justify the quashing of charge sheet or the impugned proceedings, the prayer for quashing the same is refused as I do not see any abuse of the courts process either. The summoning court has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless."

6. In compliance of the order of this Court, discharge application was moved by the revisionist and his father, which was dismissed by the trial court.

7. Feeling aggrieved, the present criminal revision has been filed.

8. A three fold submission has been submitted on behalf of the revisionist. First and foremost, it has been submitted that while the final report and the protest petition were pending, the Investigating Officer was not competent to file a charge sheet. Secondly, it was submitted that the Investigating Officer could not have taken the file on his own and commence the further investigation and specially matter should have been referred to the trial court and thirdly, it has been submitted that the present revisionist was not even born at the time of occurrence, hence his involvement in the substantial offence read with section 120-B IPC could by no stretch of imagination be presumed.

9. It is settled principle of law that the revisional jurisdiction is not as wide as the appellate jurisdiction and under the revisional jurisdiction, the High Court is required to exercise its powers where there is material irregularity or manifest error of law or procedure, or there is misconception or misreading of evidence or where the court below has failed to exercise jurisdiction vested in it or has exercised the jurisdiction wrongly and perversely or where the facts admitted or proved do not disclose any offence.

10. As a broad proposition, the interference of revisional court may be justified in cases (i) where the decision is grossly erroneous (ii) where there is no compliance with the provision of law (iii) where the finding of fact affecting the decision is not based on evidence on record (iv) where the material evidence of parties has not been considered (v) where the court below has misread or misappreciated the evidence on record (vi) where the judicial discretion has been exercised arbitrarily or perversely.

11. In Jagannath Choudhary and Others Vs. Ramayan Singh and Another, AIR 2002 SC 2229 : (2002) CriLJ 2945 : (2002) 2 Crimes 409 : (2002) 1 JT 139 Supp : (2002) 4 SCALE 492 : (2002) 5 SCC 659 : (2002) 3 SCR 936 : (2002)

AIRSCW 2338 : (2002) 4 Supreme 210 , Hon"ble Apex Court has held that "revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error on point of law resulting in miscarriage of justice".

12. Considering the limited scope of revisional jurisdiction, the arguments advanced on behalf of the revisionist have to be looked into.

13. The initial argument is that since the final report and protest petition were pending, the Investigating Officer was not competent to submit charge sheet. This argument adduced on behalf of the revisionist has no legs to stand, inasmuch as once the charge sheet is filed, final report and the protest petition loose their value. As far as the second argument that the Investigating Officer did not seek the permission of the Court while taking away the record is concerned, it has no weight because the court itself had directed the return of the record to the police. According to annexure-8, A.S.P., Kaushambi vide letter No. Va/Ayudh-Vivechan/13 dated 10.12.2013 given by Haidar Ali Kazmi alias Asad Kazmi had ordered for further investigation. In the light of which record was taken from the court with the permission of the court.

14. Section 173(8) Cr.P.C. reads as follows:

"173. Report of police officer on completion of investigation....

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

15. Thus, procedure followed by the Investigating Officer and the court below was strictly in accordance with law and no procedural irregularity was committed.

16. As far as the third contention is that the revisionist was not even born when the alleged offence under sections 419, 467, 468, 471 IPC is said to have been committed. The discharge application moved by the revisionist is annexure-2 to the affidavit, in which he has said that the basis of the charge is the sale deed of the year 1977, whereas he was not born on that date. Hence, the discharge application has wrongly been dismissed by the court below.

17. As far as the scope of discharge is concerned, section 239 Cr.P.C. refers when an accused shall be discharged, which reads as follows:

"Section 239 of Cr.P.C., When accused shall be discharged.-

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the

Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

18. In *Sheoraj Singh Ahlawat and Others Vs. State of U.P. and Another*, AIR 2013 SC 52 : (2013) CriLJ 331 : (2013) 1 RCR(Criminal) 153 : (2012) 11 SCALE 107 , it has been held that:

"11. A plain reading of the above would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of Section 239 Cr.P.C. and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in *Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another*, (2008) 2 CLT 718 : (2008) CriLJ 1391 : (2008) 1 DMC 265 : (2008) 1 JT 20 : (2007) 14 SCALE 403 : (2008) 2 SCC 561 : (2008) 1 UJ 107 . That too was a case in which a complaint under Sections 498-A and 406 read with Section 34 of the I.P.C. was filed against the husband and parents in-law of the complainant-wife. The Magistrate had in that case discharged the accused under Section 239 of the Cr.P.C. holding that the charge was groundless. The complainant questioned that order before the Revisional Court which directed the trial Court to frame charges against the accused persons. The High Court having affirmed that order, the matter was brought up to this Court. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

19. In *P. Vijayan Vs. State of Kerala and Another*, AIR 2010 SC 663 : (2010) CLT

551 : (2010) CriLJ 1427 : (2010) 2 Crimes 1 : (2010) 1 JT 459 : (2010) 1 SCALE 604 : (2010) 2 SCC 398 : (2010) 3 SCR 78 : (2010) 2 UJ 724 : (2010) AIRSCW 886 : (2010) AIRSCW 6302 : (2010) 7 Supreme 271 : (2010) 2 Supreme 199 , the Apex Court has laid down that scope and ambit of section 227 was again considered in Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, AIR 1990 SC 1962 : (1990) CriLJ 1869 : (1990) 3 JT 408 : (1990) 2 SCALE 193 : (1990) 4 SCC 76 : (1990) 3 SCR 633 , it has been held that:

"13) The scope and ambit of Section 227 was again considered in Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, AIR 1990 SC 1962 : (1990) CriLJ 1869 : (1990) 3 JT 408 : (1990) 2 SCALE 193 : (1990) 4 SCC 76 : (1990) 3 SCR 633 , this Court held that:

"Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence 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. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal this Court after considering the scope of Section 227 observed that the words "no sufficient ground for proceeding against the accused" clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence."

14) In a recent decision, in the case of Soma Chakravarty Vs. State through CBI, AIR 2007 SC 2149 : (2007) CriLJ 3257 : (2007) 7 JT 181 : (2007) 7 SCALE 25 :

(2007) 5 SCC 403 : (2007) 6 SCR 324 : (2007) 2 UJ 696 : (2007) AIRSCW 3683 : (2007) 4 Supreme 280 , this Court has held that the settled legal position is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge."

20. Thus, at the time of framing of charge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

21. This is the defence of the revisionist that he was not born at the time of alleged offence. The Secondary School Certificate has been filed to support the date of birth of the revisionist. This certificate could be one of the circumstances to prove the date of birth, but this is not yet proved and the trial court while deciding the discharge application could not evaluate the evidence adduced by the accused, which has to be done according to the Indian Evidence Act.

22. Learned counsel for the revisionist has relied upon the case of Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, (2013) 2 ABR 36 : (2013) 1 AD 157 : (2013) CriLJ 754 : (2013) 1 JT 97 : (2013) 2 RCR(Criminal) 197 : (2012) 12 SCALE 343 : (2013) 5 SCC 762 , in which it has been held that:

"but for specific order by the superior court, the reports, whether a primary report or a report upon "further investigation" or a report upon "fresh investigation", shall have to be construed and read conjointly."

23. In the present case, submission of charge sheet itself is enough for the court to look into. The final report or the protest petition loses their value.

24. As far as the charge sheet is concerned, copy of the charge sheet is annexure-4 to the affidavit, in which the main accused Mohd. Iqbal Qazim was found guilty under sections 419, 420, 467, 468, 471 and 120B IPC and Ammar Kazim, the present revisionist was found guilty under section 120-B and 506 IPC. It has been submitted that section 120-B IPC cannot be read in isolation. The court while framing charges has to see as to under what section charges could be

framed and the revisional court in these circumstances, leaves it open to the court to decide under what sections charges have to be framed. If the court proceeds to frame charge against the accused, the court can proceed under section 228 Cr.P.C. and as such the court has only to look into prima facie case.

25. As far as the matter when the revisionist was born is concerned, in *State of Orissa Vs. Debendra Nath Padhi*, AIR 2005 SC 359 : (2005) 99 CLT 348 : (2005) 1 CTC 134 : (2004) 10 JT 303 : (2004) 10 SCALE 50 : (2005) 1 SCC 568 : (2004) AIRSCW 6813 : (2004) 8 Supreme 568 , the Hon"ble Apex Court has specified that:

"What is the meaning of expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and sent to that court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the document referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial."

26. Further the Hon"ble Apex Court has laid down that:

"Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the

prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police."

27. Learned counsel for the revisionist has lastly also contended that in this matter it is mandatory to issue a notice to the opposite party No. 2 as provided under section 401 Cr.P.C. and proceedings should be stayed while opposite party No. 2 should be heard as provided under section 401 Cr.P.C.

28. As far as section 401 Cr.P.C. is concerned, it reads as follows:

"401. High Court's Powers of revisions.

(1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

29. According to section 401 Cr.P.C. sub-clause (2), no order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

30. This provision would apply only if an order has to be passed, due to which the accused or any other persons would be prejudiced. In the present case, the revisionist has been called and there is no necessity of hearing the informant since this revision can be decided at the admission stage itself.

31. Thus, on the aforesaid grounds, there is no illegality, irregularity or

impropriety in the order.

32. Accordingly, the revision is dismissed.

33. The revisionist is directed to surrender himself before the court concerned.