
(2000) 06 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Revision No. 413 of 1999

Bhagya Kalita

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 227, 228
Penal Code, 1860 (IPC) — Section 302

Citation : (2001) CriLJ 575 : (2000) 3 GLT 427

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : J.M. Choudhury, A.K. Bhattacharyya, Eva Kakati, P. Kataki, A. Kalita, A. Bhattacharyya, for the Appellant; D.K. Das, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. A.K. Bhattacharyya, learned counsel for the petitioner and Mr. D.K. Das, learned P.P. for the CBI.

2. This revision is directed against the order dated 30-6-99 passed by the Sessions Judge, Kamrup, Guwahati in Sessions Case No. 9(K) of 1999 whereby the Court framed charges u/s 302, IPC against the accused-petitioner Shri Bhagya Kalita.

3. The prosecution allegation is that on the fateful night of 31-7-95 at about 10/15 P.M. Mrs. Karabi Das and her daughter were shot dead in their residence situated at Ambari, Guwahati. The case was initially investigated by Latasil Police Station and thereafter as per the direction of this Court in the writ petition the investigation was handed over to the Central Bureau of Investigation for short "the CBI". Further investigation was made and thereafter chargesheet was submitted against the present petitioner Shri Bhagya Kalita, Md. Fatiur Ali and one Bhupen Medhi shown as absconder. Vide the impugned order the learned Sessions Judge framed charge against the petitioner Shri Bhagya Kalita and Md.

Fatiur Ali as the other accused remained absconded.

4. Upon hearing the learned counsel for both sides it is seen that the charge against the present petitioner has been framed mainly on the basis of the statement of Smti. Manju Dey, the maid servant residing in the house of the deceased. The learned counsel for the petitioner submits that in the FIR lodged before police, no one has been named as an assailant and this witness Smt. Manju Dey informed the neighbours and she was also instrumental in lodging the FIR. In her statement recorded u/s 161, Cr.P.C. by Latasil Police Station and consequent statement recorded u/s 164, Cr.P.C. she has not stated anything involving the present petitioner Shri Bhagya Kalita. However, in her subsequent statement made before the CBI and also as recorded u/s 164, Cr.P.C. she has made certain statements incriminating the present petitioner Shri Bhagya Kalita by stating that at the relevant time she heard the voice of Shri Bhagya Kalita at the place of occurrence, that is, inside the house of the deceased and after the gun shot she saw the petitioner Bhagya Kalita fleeing from the place of occurrence in his own car which was parked outside the house. CBI has also seized a pair of chappal allegedly left behind by the petitioner at the place of occurrence after the incident. The subsequent statement of Smt. Manju Dey recorded by the CBI no doubt discloses a prima facie case for framing of charge. Learned counsel for the petitioner Mr. A.K. Bhattacharyya, however, submits that the subsequent statement was made after one year of the occurrence whereas immediately after the incident this witness did not involve the present petitioner in any manner. Learned counsel for the petitioner has placed reliance on the following decisions of the Apex Court :-

Union of India (UOI) Vs. Prafulla Kumar Samal and Another,

Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others,

Punjab National Bank and others Vs. Surendra Prasad Sinha,

Referring to the earlier decisions the Apex Court laid down the following principle in para 10 of the judgment in the case of Union of India v. Prafulla Kumar Samal (supra) (at pages 157-158 Cri LJ) :-

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges u/s 227 of the Code has the 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 a 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 the 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 a mouth-piece 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.

5. The principles laid down in Prafulla Kumar Samal (supra) were reiterated in the case of Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, and the Apex Court further observed (at page 1874 of Cri LJ) :

From the above discussion, it seems well settled that at the Sections 227-228 stage 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 disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

6. Mr. Bhattacharyya had laid further emphasis on the following observations of the Apex Court in the case of Punjab National Bank and others Vs. Surendra Prasad Sinha, (at page 2919 of Cri LJ) :

It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process

and laid complaint against all the appellants without any prima facie case to harass them for vendetta.

7. Mr. D.K. Das, learned counsel appearing for the CBI has submitted that this is not a case of no evidence and at this stage the trial court cannot weigh the evidence as if deciding the matter finally. It is further submitted that the co-accused Md. Fatiur Ali had also preferred a criminal revision against the order of framing of charge and the said Criminal Revision numbered as 347/99 was dismissed by this Court vide order dated 10-9-99. Learned counsel has also placed reliance on a latest decision of the Apex Court in the case of State of M.P. Vs. S.B. Johari and Others, and the Apex Court observed as follows (at page 945 of Cri LJ) :

In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed 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 defence evidence, if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial.

8. The moot point for consideration is what is the effect of the two statements recorded u/s 161, Cr.P.C., and another two statements recorded u/s 164, Cr.P.C. on the evidence of P.W. Smt. Manju Dey and whether the Court at the stage of framing of charge can evaluate the evidence of Smt. Manju Dey. I have perused the statement available on record and it is seen that the witness has given certain explanations for omission in the earlier statement and if her explanation is acceptable, weightage can be given to her statement/explanation. The question has to be decided during the trial only when the witness will be examined and cross-examined and the Court will appreciate the evidence of the witness. The sifting of evidence at this stage is permissible only for a limited purpose to find out a prima facie case but the Court cannot decide at this stage that such witness is not reliable or that the explanation by her is not justifiable or acceptable. In a recent decision, the Apex Court held that the Court is at liberty to rely on the statement of the witness who has been examined twice u/s 161, Cr.P.C. once by the earlier investigating police officer and later on by another investigating officer. Mr. Bhattacharyya submits that at this stage he is not challenging the admissibility of evidence of Smt. Manju Dey recorded

subsequently by the CBI. In view of the above this Court is of the opinion that the veracity of different statements made by Smt. Manju Dey cannot be considered and disposed of at this stage, that is, at the time of framing of charge. Hence I find that there is no infirmity or illegality in the impugned order whereby charge was framed against the petitioner as the materials on record disclose a prima facie case.

9. In the result the revision petition is dismissed. The trial Court shall proceed with the matter. It is needless to mention that the trial Court will not be influenced in any manner to prejudice the case of either party by any observations made in this order.

10. Let the lower Court records be sent back.