
(2012) 09 AHC CK 0256
In the Allahabad High Court
Case No : Criminal Revision No. 2752 of 2012

Bhuvneshwer Mishra and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 202, 203, 226, 227
Penal Code, 1860 (IPC) — Section 107, 294(b), 304B, 306, 498A

Citation : (2013) 1 ACR 496 : (2012) 10 ADJ 97 : (2013) 2 ALJ 67

Hon'ble Judges : P.K.S. Baghel, J

Bench : Single Bench

Advocate : Dinesh K. Singh, for the Appellant;

Judgement

Hon"ble P.K.S. Baghel, J.—This is an application u/s 397/401 Cr.P.C by the two applicants/revisionist, whose application for discharge have been rejected by the learned Additional Sessions Judge, vide order dated 31.7.2012. The basic facts pertinent to the issue in question may be stated as follows :

The respondent No. 2 Vimla Tiwari lodged an FIR wherein she has made an allegations that her son was married with the daughter of the Sudama Pandey. After the marriage the couple were living in Faridabad. On 4th March, 2007 on the occasion of Holi they came to Varanasi. From there her daughter-in-law Ritu Pandey went to her parental house alongwith her father Sudama Pandey.

Thereafter, she was not sent back by Sudama Pandey and he threatened respondent No. 2/complainant and her late husband Dr. Ramnath Tiwari for their share in the property of Dr. Ramnath Tiwari, failing which, he threatened, to lodge the criminal case under the Dowry Prohibition Act and to rope all the family members in the said case. When his demand was not met, he initiated criminal proceedings. Because of the harassment at the hand of Sudama Pandey, her husband Late Dr. Ramnath Tiwari was in great distress and agony. Ultimately he could not bear the torture and humiliation and it lead him to suicide. Relevant, would it be to mention that at the spot of suicide a suicidal note was recovered

which was alleged to be in the handwriting of the deceased. In the said note both the applicants have been mentioned to be responsible alongwith Sudama Pandey and his wife for his suicide. Consequent upon the First Information Report an investigation was made and the Police submitted a report u/s 173 Cr.PC wherein they were charged u/s 306/506 IPC.

2. The applicant No. 1 Bhuneshwar Mishra and applicant No. 2 Shyam Bihari Tiwari were also charged under the same section. They moved an application 5 Kha and 10 Kha u/s 227 Cr.PC for discharge. The respondent No. 2 filed her objections. By the impugned order the learned Judge has rejected the Discharge Application of the respondent Nos. 1 and 2.

3. Learned counsel for the applicant submitted that both the applicants have been falsely implicated in the matter and in fact it was not the case of suicide by the deceased Dr. Ramnath Tiwari, he died of heart attack. He further submitted that the suicide note is a fabricated document and no reliance can be placed on the said note. He submitted that only in the suicide note the name of the respondent have figured and on the basis of the said note the applicants have been falsely implicated in the said case.

4. Learned Counsel for the applicant has relied on the judgment of Supreme Court in M. Mohan Vs. The State represented by The Deputy Superintendent of Police, ; Gangula Mohan Reddy Vs. State of Andhra Pradesh, ; Madan Mohan Singh Vs. State of Gujarat and Another, ; Mahendra Singh and another v. State of M.P., 1995 (Suppl-3) SCC 731-732; Asha Shukla v. State of U.P. and another, (2002 (Crl.LJ 2233-2240) and Hira Lal Jain v. State, (2000(D.L.T.) 87-265-267.

In the case of M. Mohan Vs. The State represented by The Deputy Superintendent of Police, , the offence was under Sections 304B and 306 IPC. The complainants daughter was married to Anandraj in the year 2001. It was alleged that on the day of Pongal festival the husband family made a plan to visit Theme Park at Madurai. However, the husband and his wife, (complainant's daughter) were asked to use the public bus to reach there. They took a public transport to reach Madurai. The daughter of the complainant was deeply hurt by the said insult and taunting made by the wife of husband's brother. She was so deeply hurt by the said insult that she asked her father to give her a Car and within four days she committed suicide by hanging herself in the bedroom using her sari. The father of the deceased filed a complaint at the Police Station alleging that his son-in-law, his elder brother and his wife who had made taunting on her daughter were responsible for her daughter suicide. The police registered a case. The complaint was investigated and charge sheet was filed against the husband, his brother and his wife. Against the said prosecution an application u/s 482 Cr.PC was filed before the Madras High Court. The learned single Judge quashed the charges under Sections 498A and 304B IPC and partly allowed the petition. However, he held them to face the trial for the offence u/s 306 IPC. Against that background the issue before the Supreme Court with regard to scope of Section 482 Cr.PC and not scope of 227 Cr.PC. For the said

reasons the case has no application in the present case.

5. In the case of Gangula Mohan Reddy Vs. State of Andhra Pradesh, , the Supreme Court had occasioned to deal with the final conviction by the High Court of the accused u/s 306 IPC. In the said case the case of the prosecution was that an agriculturist had harassed his labour by leveling the allegations that he had committed theft of some gold ornaments. It was alleged that the said labour could not bear the harassment meted to him and he committed suicide by consuming pesticides. In the said case also the issue involved was with regard to abatement u/s 107 IPC and the trial Court convicted the agriculturist u/s 306 IPC and his conviction on appeal was confirmed by the High Court. The agriculturist/appellant had filed the Criminal Appeal before the Supreme Court. This case has also no application in the facts and circumstances of the present case.

6. Likewise in the case of Madan Mohan Singh Vs. State of Gujarat and Another, , the accused faced the trial u/s 306/294(b) IPC. In the said case against the FIR an application u/s 482 Cr.PC was filed and the High Court refused to quash the First Information Report against the order of the High Court. The Criminal Appeal was filed.

7. In the case of Mahendra Singh and another v. State of M.P., 1995 (Suppl-3) SCC 731, the accused had faced the trial and they were convicted u/s 306/107/498A IPC. No discharge application was filed by them u/s 227 Cr.PC. Thus this case also does not help the revisionist.

8. The scope under Sections 226 and 227 Cr.PC has been dealt with by the Supreme Court in a large number of cases. In a series of decisions the Supreme Court held that at the stage of deciding the application u/s 227 Cr.PC the Court has to see only prima facie case. A survey of the law on the subject would be necessary and can start with State of Bihar Vs. Ramesh Singh, , at page 42:

Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either u/s 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to

the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.

9. In *Soma Chakravarty Vs. State through CBI*, , at page 408, the Supreme Court opined:

It may be mentioned that the settled legal position, as mentioned in the above decisions, 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 at that stage. Before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

10. The Supreme Court after referring to a number of cases came to hold in *Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra*, , at page 399 :

It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable 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 gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unremitted, make a conviction reasonably possible. (See *State of Bihar v. Ramesh Singh*² and *Prafulla Kumar Samal*¹.).

11. Again in *Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others*, , at page 684, the position was highlighted as follows :

Sections 227, 239 and 245 deal with discharge from criminal charge. In *State of*

Karnataka v. L. Muniswamy, 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. 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.

In R.S. Nayak v. A.R. Antulay this Court referred to Sections 227 and 228 so far as they are relatable to trial. Sections 239 and 240 are relatable to trial of warrant cases and Sections 245(1) and (2) are relatable to summons cases.

After analysing the terminology used in the three pairs of sections it was held (in Antulay case) that despite the differences there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of a prima facie case is to be applied.

12. In P. Vijayan Vs. State of Kerala and Another, , at page 402 :

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

13. In R.S. Mishra Vs. State of Orissa and Others, , at page 700, the Supreme Court noted as follows :

The observations of this Court in State of Bihar v. Ramesh Singh are very apt in this behalf. A Bench of two Judges of this Court has observed in that matter 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. The Court referred to the judgment of a Bench of three Judges in Nirmaljit Singh Hoon v. State of W.B., which in turn referred to an earlier judgment of a Bench of four Judges in Chandra Deo Singh v. Prokash Chandra Bose and observed as follows in SCC para 5: [Ramesh Singh case, SCC p. 42)

5. In Nirmaljit Singh Hoon v. State of W.B.--Shelat, J. delivering the judgment on behalf of the majority of the Court referred at SCC pp. 762-63: SCR p. 79 of the Report to the earlier decisions of this Court in Chandra Deo Singh v. Prokash Chandra Bose⁶-- where this Court was held to have laid down with reference to the similar provisions contained in Sections 202 and 203 of the Code of Criminal Procedure, 1898 "that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to

be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused" (Nirmaljit case, SCC p. 763, para 22).

14. Learned AGA has submitted that the order of the learned Sessions Judge is a reasoned order and there is no error in the said order and the Court has rightly held that at the stage of the discharge u/s 227 Cr.P.C only prima facie case has to be seen. If from the allegations available on the record the offence is made out then the application for discharge u/s 227 Cr.P.C is deserved to be rejected and accused are liable to face the trial. Bearing in the mind the principle aforesaid when this Court proceeded to consider the facts of the case it found that in the suicide note the deceased has clearly mentioned the name of both the revisionist in no uncertain terms. This Court would not enter into determination of a disputed question of facts at this stage. Therefore the submission of the learned counsel for the revisionist that suicide note is fabricated and is not in the handwriting of the deceased hardly merit acceptance and is fallacious.

Suffice would it be to state that the defence would be considered threadbare at the stage of trial not before that.

After careful consideration, I find that is no error in the impugned order of learned Sessions Judge. The Revision lacks merit, hence it is liable to be rejected. Accordingly it is rejected.

However, no order is passed as to costs.