

(2009) 01 DEL CK 0268

In the Delhi High Court

Case No : Criminal Rev. (P) . 564-65 of 2005

Dr. Zile Ram and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 227, 228, 239
Penal Code, 1860 (IPC) — Section 34, 406, 451, 498A, 506

Citation : (2009) 01 DEL CK 0268

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

**Advocate : Monika Bhanot, Savita Prabhakar and A.K. Mishra, for the Appellant;
Lovkesh Sawhney, APP, for the Respondent**

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—Both the revision petitions have arisen out of the common order dated 15.02.2005 whereby the learned Metropolitan Magistrate was pleased to order framing of charges against the petitioners for offences under Sections 451/506 Indian Penal Code (hereinafter referred to as IPC) and in case FIR No. 273/97 P.S. Kotla, Mubarikpur, New Delhi and he accordingly framed charges against the petitioners.

2. Dr. Zile Ram is the cousin brother of co-accused Kusum whereas Ram Sharan Bhati is the father of co-accused Kusum. Sudhir Kumar is the husband of co-accused Kusum whereas Chet Singh and Raj Kumar, complainants happen to be the father-in-law and brother-in-law of co-accused Kusum.

3. Checkered history of this case is that Kusum was married to Sudhir Kumar in December, 1985. Because of some differences, Kusum lodged an FIR being FIR No. 244/87 under Sections 498-A/506 IPC against complainant Chet Singh and his wife. Chet Singh was arrested in the said case. However, parties compromised the matter and in view of the settlement, Chet Singh was acquitted. Kusum filed another FIR in 1996 u/s 406 IPC against complainant Raj

Kumar, Chet Singh and his wife which was quashed by this Court in Criminal Petition No. 698/1996. A civil suit being suit No. 567/1990 was filed by Chet Singh against the accused persons which resulted into an ex- parte judgment and decree dated 12.05.1992, whereby petitioners were restrained from dispossessing Chet Singh from Property No. 1876, Village Kotla Mubarikpur, New Delhi without due process of law and also from interfering with their peaceful possession in the suit property. This order has attained finality.

4. Sudhir Kumar filed another suit being suit No. 2159/1996 seeking partition of the ancestral property and rendition of accounts. In the said case, Kusum moved an application for being impleaded as necessary party. The said case is pending adjudication.

5. Allegations of the prosecution against the petitioners are that on coming to know from the statement made by counsel for the complainant Raj Kumar that complainant Chet Singh had suffered a heart attack, accused Kusum and her husband Sudhir along with their 10 year old son went to the house No. 1876, Kotla Mubarikpur on 14.05.1992 at about 7.30 p.m. to enquire about Chet Singh's health.

6. All the petitioners allegedly entered into the said house of complainant and started abusing Chet Singh who had recently been discharged from the Hospital. Petitioners allegedly threatened Chet Singh and Raj Kumar of their lives and also that they would be dispossessed from the said house on the plea that they had obtained a favourable order from this Court on that day i.e. on 14.05.1997. Police was immediately called and petitioners Ram Sharan Bhati and Dr. Zile Ram managed to run away from outside the house before the arrival of the police, whereas Sudhir Kumar and Kusum allegedly trespassed in the house of the complainants, threatened them and assaulted Shri Chet Singh. DD No. 73-B dated 14.05.1997 was recorded but, FIR was registered only on 21.05.1997 after seeking prosecution opinion.

7. After conducting investigation, the Investigating Officer filed a final report u/s 173 Criminal Procedure Code seeking cancellation of the FIR as investigation did not reveal commission of any cognizable offence by any of the petitioners. However, this report was not accepted by the learned Metropolitan Magistrate and he took cognizance of the offences under Sections 451/506/34 IPC and summoned all the four accused persons. The said order was challenged by the petitioners in revision being Criminal Revision No. 62/1999. The revision was dismissed vide order dated 12.12.2000. Against this order, petitioners Dr. Zile Ram and Ram Sharan Bhati filed Criminal Writ Petition being Writ Petition No. 1084/2000. This writ petition was withdrawn by the petitioners on 15.07.2004 reserving their right to take all the relevant pleas regarding framing of charges before the trial court.

8. The learned Metropolitan Magistrate vide impugned order was pleased to hold that prima facie there was evidence to indicate that petitioners had committed

offence under Sections 451/506/34 IPC and proceeded with framing of the charges under the said sections against all the petitioners.

9. Learned Counsel for Dr. Zile Ram has submitted that at the time of the alleged incident on 14.05.1997, he was not present at the place of incident as, being a Government servant, he was assigned a duty for making horticulture decorations in the technical area Palam Airport from 10.05.1997 to 15.05.1997 in connection with the visit of the Prime Minister of India to Maldives and was on duty at the time of the alleged incident which fact was duly verified by the investigating officer and that petitioner Dr. Zile Ram has been falsely implicated in this case because of previous property dispute inter se the parties.

10. It is submitted by the learned Counsel for the petitioner; Ram Sharan Bhati that Ram Saran Bhati was not present at the time when the incident took place and he had gone to a far off place for attending a marriage function, which was duly verified by the investigating officer.

11. Learned Counsel for the petitioners further emphasized that the FIR indicates that there was no person other than the complainant Raj Kumar present on the spot when the alleged incident took place and there was no material on record to show when the alleged incident had taken place and that the trial court erred in relying upon the contents of the FIR only, without considering the material available on record, while rejecting the cancellation report and taking cognizance of offences against the petitioners. According to learned Counsel for the petitioners, prima facie there is no sufficient material on record to make out any case against the petitioners and therefore, the order of the trial court dated 15.02.2005 and consequent framing of charges is in violation of provisions of Section 239-240 of Criminal Procedure Code and therefore are liable to be set aside.

12. It is submitted by counsel for the petitioners Kusum and Sh. Sudhir that visit of the petitioners to Chet Singh was bona fide, with a view to enquire him about his health and not with any motivation to trespass into the house, threaten the complainants or assault them and there was no such circumstance under which the petitioner could have committed any such offence as alleged especially when petitioners Kusum and Sudhir had taken their 10 year old son along with them.

13. All these submissions made by learned Counsel for the petitioners have been refuted by learned Additional Public Prosecutor for the State who was duly assisted by Shri A.K. Mishra, Advocate for the complainant.

14. Parties have been litigating with each other for a long time. This litigation started in the year 1987 just after two years of the marriage of Kusum with Sudhir. In the FIR, there are clear allegations against all the petitioners except Dr. Zile Ram that, on 14.05.1997, after coming to know in the court that Chet Singh was unwell, they barged into the house of the complainant and threatened him of his life and property and pounced upon Chet Singh, who was about 73 years old at that time. It is alleged that petitioners Dr. Zile Ram and Ram Sharan

Bhati ran away while Kusum and Sudhir were apprehended by the Police. Admittedly, Dr. Zile Ram and Ram Sharan Bhati were not apprehended on the spot nor they were arrested during the investigation of the case.

15. Dr. Zile Ram has disputed his presence on the spot at the relevant time and date of the alleged incident. Dr. Zile Ram is employed with L-Division, CPWD during the relevant period when the alleged incident took place. On 6.5.1997, a letter was sent by Protocol Officer, Government of India, Ministry of External Affairs to Shri R.S. Puri, Executive Engineer, L-Division, CPWD calling upon him to make necessary arrangements for the departure and arrival of the Prime Minister from Maldives from 11.05.1997 to 14.05.1997. Consequently, a letter was issued by CPWD, Horticulture (South Division) to the Deputy Commissioner of Police (Securities) asking them to provide necessary clearance/security post to the persons named in the said letter for purposes of making Horticulture decorations at Palam Airport from 10.05.1997 to 15.05.1997. Dr. Zile Ram was Deputy Director of Horticulture and he was deputed to supervise the horticulture works at Palam Airport during the said period. A letter was also collected by the Investigating Officer dated 28.03.2000 from CPWD Directorate of Horticulture which certified that Dr. Zile Ram, Deputy Director, Horticulture was on duty on 14.05.1997 from 4 p.m. to 8 p.m. at A.F.S. Palam Airport in connection with horticulture works on the occasion of arrival of the then Prime Minister Mr. I.K. Gujral from Maldives. Thus, prima facie there is evidence to indicate that Dr. Zile Ram was looking after the horticulture arrangements at Palam Airport on 14.05.1997 when the alleged incident took place. The incident allegedly took place at about 7.00 p.m. whereas on 14.05.1997, Dr. Zile Ram was on duty upto 8.00 p.m., as the arrival of the Prime Minister was expected at 6.00 p.m. as per the letter dated 6.5.1997. The learned Metropolitan Magistrate in the impugned order did not consider the evidence collected by the Investigating Officer during the investigation of the case regarding the plea of alibi taken by Dr. Zile Ram. Under these circumstances, the order of the learned Metropolitan Magistrate for framing of charges against Dr. Zile Ram cannot be sustained.

16. Learned Metropolitan Magistrate has placed reliance on *Kanti Bhadra Shah v. State of West Bengal* 2000(1) AD(SC) 1", to observe that a detailed order need not be passed at the time of framing of charges.

17. Be that as it may, an order of discharge being a final order can be challenged by the prosecution and if challenged, the reasons for discharge should be made available for scrutiny by the superior court and in case a charge is framed and the trial proceeds, then also an opportunity to challenge any irregularity in the charge or its validity is available to the accused after the charges are framed, or even at the conclusion of the trial.

18. The Magistrate has to consider the material placed before him whether it discloses grave suspicion against the accused which has not been properly explained, the court is justified in framing a charge and proceed with the trial. However, where the judge is justified that the evidence produced before him

does give rise to some suspicion but not grave suspicion against the accused, he is within his rights to discharge the accused. At the same time, if two views are equally possible, the Magistrate has the power to discharge the accused. The Court is not to act as a mouthpiece of the prosecution and frame charge against an accused mechanically without any application of mind. Court is within its rights to sift and weigh the evidence and material available on record to come to a prima facie view if any case for framing of charge has been made out against the accused. At the same time, the Court is not to make a roving inquiry as if it was deciding the case on merits. At the time of framing of charge, the Court is not to meticulously judge the truth, veracity and effect of the evidence which the prosecution proposes to adduce. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not to be exactly applied at the stage of Section 227 or 228 Cr.P.C. While perusing the records and the statements on which the prosecution relies, the Court has to form a presumptive opinion as to the facts existing and ingredients Constituting the offence and justifying the framing of charge.

19. In Union of India (UOI) Vs. Prafulla Kumar Samal and Another, the Supreme Court has laid down four principles to be taken into account. The Court observed:

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 judge which under the present Code is a senior and experienced court cannot act merely as a post office or a 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.

20. It is trite that a court cannot act merely as a post office or mouth piece of

the prosecution but has to consider the broad probabilities of the case, the allegations against the accused, evidence, oral and documentary, produced before the Court and any basic infirmities appearing in the material placed before it. However, at the same time, it does not mean that a judge has to make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. While considering the question of framing charges, the Court has no doubt power to sift and weigh evidence for the limited purpose of finding out whether or not a prima facie case against accused has been made out, but at the same time, Court is not to sift and weigh the evidence as if it were deciding the case on merits. Thus, it is clear that the Court has to form a presumptive opinion as to the existence of factual ingredients Constituting the offence and justifying the framing of the charge.

21. In the present case, presence of Dr. Zile Ram at the spot, at the relevant time, itself is in dispute and the evidence collected against him during the investigation of the case may raise some suspicion against him but not a grave suspicion for framing of charges under Sections 451/506/34 IPC.

22. Admittedly, he was not apprehended on the spot, though his name appears in DD No. 73-B dated 14.05.1997 i.e. on the same day after the alleged occurrence. As per this DD, Chet Singh had informed the Investigating Officer that petitioners Kusum and Sudhir along with Ram Saran Bhati and Dr. Zile Ram had come to his house with a view to forcibly occupy the same and both Dr. Zile Ram and Ram Sharan Bhati ran away from outside the house. It were only Sudhir and Kusum who had trespassed in the house and threatened Chet Singh. FIR was registered after about 6 days of the occurrence. Under these circumstances, presence of Dr. Zile Ram at the spot on 14.5.1997 prima facie is doubtful. Therefore, the Trial Court went wrong in framing charges for offence under Sections 451/506/34 IPC against Dr. Zile Ram.

23. As regards accused Ram Sharan Bhati, since his name appears in the FIR and there is evidence to indicate that he had trespassed into the house of the complainant, threatened Chet Singh of his life and also criminally assault him, the court adopted a right approach in framing charges against him. Ram Sharan Bhati has also claimed alibi on the plea that he had gone to far off place to attend a marriage and was not in Delhi on the date and time of the alleged incident. This is a defence raised by Ram Sharan Bhati which he has to prove during the trial of the case. The dispute inter se the parties pertains to property in which petitioner Sudhir Kumar claims his right and has filed a suit for partition and rendition of accounts. This dispute over property, probably, is the cause of alleged trespass by Sudhir Kumar and Kusum into the disputed property of Chet Singh, criminal intimidation to, and assault on him.

24. The investigating agency had sought cancellation of FIR on the grounds that the complaint was not corroborated by any independent witness and that complainant wanted to grab whole property in connivance with his father and therefore purposely got the case registered against his own brother, his wife and

others. The investigating officer was also weighed by the fact that Sudhir and Kusum were accompanied with their 10 year old son to the house of the complainant and in normal circumstances, it was impossible for any trespasser to dispossess a fully occupied house by the other family members. The investigating officer flawed in taking into consideration the previous FIR got registered by Kusum under Sections 498A/506/34 IPC at Police Station Kotla Mubarikpur. He, therefore, was of the opinion that since complainant and his father were humiliated at the hands of Kusum and Sudhir, they got this FIR registered against the petitioners.

25. Under these circumstances, the trial court rightly took cognizance of offence under Sections 451/506/34 IPC against Kusum, Sudhir Kumar and Ram Sharan Bhati, summoned them and accordingly framed charges against them.

26. Hence, the impugned order on charge dated 15.02.2005 and consequent framing of charge of the even date as against Dr. Zile Ram is hereby quashed. The Trial Court shall proceed with the trial of the case as against the remaining three persons, Ram Sharan Bhati, Kusum and Sudhir Kumar. Accordingly Criminal Revision Petition No. 564-565/2005 is partly allowed and Criminal Revision Petition No. 567/2005 is hereby dismissed.

Attested copy of this order be sent to the trial court as well as the State. Trial Court record be sent back to the trial court.