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**(1999) 09 GAU CK 0020**

**In the Gauhati High Court**

**Case No : Criminal Revision No. 347 of 1999**

Fatiur Ali

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

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**Date of Decision : 10-09-1999**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 227, 228(1), 397  
Penal Code, 1860 (IPC) — Section 107, 107(2), 114, 302

**Citation : (2000) CriLJ 2182**

**Hon'ble Judges : B.N. Singh "Neelam", J**

**Bench : Single Bench**

**Advocate : P.K. Goswami, J.M. Choudhury, P. Kataki and P. Kalita, for the Appellant; D.K. Das, Special Public Prosecutor, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

B.N. Singh "Neelam", J.—This criminal revision petition is so preferred by the petitioner Md Fatiur Ali - a car driver by profession u/s 482 read with Section 397 401 of the Cr.P.C. against the order dated 30-6-99 passed by the learned Sessions Judge, Kamrup at Guwahati in Sessions Case No 9 (K)/99 by virtue of which under, the provisions of Section 228(1)(b) of the Cr.P.C, after hearing the P.P. and the learned counsel for the present petitioner being one of the accused in the said Sessions Case arising out of Latashil P.S. Case No. 70/95, CBI Case No. RC-9/SCB-9/S/95-Calcutta has framed charge as far as the present petitioner is concerned under Sections 302/114, IPC. According to the present petitioner there is no sufficient ground for proceeding against the present accused who would have rather been discharged u/s 227 of the Cr.P.C. though chargesheet was submitted even against the petitioner Md Fatiur Ali by the CBI on 7-10-98, a copy of the chargesheet being filed marked as Annexure-XI. Thus on the grounds mentioned in this criminal revision petition prayer is that allowing the proceeding to continue against the present petitioner Md Fatiur Ali would be nothing but the abuse of the process of the Court and therefore, in order to secure the ends of justice, prayer is that by exercising inherent powers as far as

this petitioner is concerned, impugned order dated 30-6-99 be set aside and the said criminal proceeding so initiated which has now commenced for Sessions trial under Chapter XVIII of the Cr.P.C. against Md Fatiur Ali be rather quashed.

2. It transpires that in this criminal revision petition notice of motion was so issued on 18-8-99 and the matter being listed for admission, prayer so made on 24-8-99 on behalf of both side lawyers was that since there is urgency because of in the sessions trial learned Sessions Judge had fixed date for examining the prosecution witnesses, this criminal revision petition be disposed of at this stage itself and in that light the hearing was so taken up, Petitioner Md Fatiur Ali is represented by the learned senior counsel Shri PK Goswami and the CBI is represented by Shri DK Das, special P.P., CBI. Both side lawyers are heard.

3. The short history of the prosecution case giving rise to this criminal revision petition is that on 31-7-95 at about 22.15 hrs. double murder was so committed in the rented house occupied by Smti Karabi Das (since deceased) wife of Sri Ujjal Kr Das along with her minor daughter Chandrani Dharitri Das alias Dubori at Ambari in the heart of the Gauhati town, the first informant being Sri Prabal Das on the basis of which Latashil P.S. Case No. 70/95 got so registered. There was also one G.D. entry being G.D. Entry No. 920 dated 31-7-95. Later on it is by the order of this Court in C.R.No. 3587/95 dated 22-9-95 that the CBI took the investigation of this case. It also transpires that at the time of the alleged occurrence Sri Ujjal Kr Das was out of station and there were only four persons in the house i.e. Smti Karabi Das (since deceased), her daughter Chandrani Dharitri Das alias Dubori, the maid servant Miss Manju Dey and about 6 years old son of Smti Karabi Das wife of Sri Ujjal Das namely Angshuman. In course of investigation so conducted, it further transpires that the statement of Miss Manju Dey with that of Angshuman Das the minor son were so recorded under Sections 161 and 164 Cr.P.C. by the police and subsequently also by the CBI officers and the Judicial Magistrate copies of which are filed marked as Annexures III to VIII, Statement of the present petitioner Md Fatiur Ali who happened to be the driver of Shri Bhagya Kalita is also so recorded u/s 164, Cr.P.C. on 18-8-95 a copy of which is also filed for perusal marked as Annexure-VIII. It is after the completion of the investigation by the CBI that the chargesheet was submitted vide chargesheet No. 3/98 dated 7-10-98 in CBI Case No. RC/S/95-Calcutta in connection with the FIR dated 6-11-95 relating to this occurrence. The CBI, Special Crime Branch sent up for trial Shri Bhagya Kalita against whom charge is so framed on the same day by the learned Sessions Judge, Kamrup at Guwahati u/s 302, IPC for the said double murder so committed on 31-7-95 and the other person sent up was Md Fatiur Ali, the present petitioner against whom charge is framed u/s 302 114, IPC. The third man against whom also in course of investigation the CBI found material is one Sri Bhupen Medhi found absconding.

4. Sri PK. Goswami, learned senior counsel has pressed into service all the grounds so taken in this criminal revision petitioner for setting aside the order framing charge against the present petitioner Md Fatiur Ali in Sessions Case No.

9(K)/99 and also for quashing the whole proceeding against him submitting that there was even no prima facie material before the learned Sessions Judge as to frame charge against him of his abetting the offence as a result of which offence was committed resulting into gruesome murder of wife and daughter of Sri Ujjal Kr Das on the said fateful night. The materials on record available before the learned Sessions Judge as submitted did not disclose anything about Md. Fatiur Ali the present petitioner participating in the commission of the offence. There was no material to show that the petitioner had in any way entered into conspiracy with his master/employer Shri Bhagya Kalita or Shri Bhupen Medhi the other accused who is absconding. It is emphatically argued that the present petitioner had not in any way abetted Sri Bhagya Kalita or Sri Bhupen Medhi committing the said offence of murder and On no account it can be said that it was in consequence of the said abetment that the occurrence took place. Learned Sessions Judge, it is pointed out, while passing the impugned order dated 30-6-99 failed to apply his mind to this vital aspect of the matter and in this connection Shri Goswami learned senior counsel has referred to Annexures III to VIII which are the statement of the maid servant, Miss Manju recorded so recorded u/s 161, Cr.P.C. in course of investigation by the police and CBI officers with that of the statement of Angshuman Das, the minor son of the deceased Smti Karabi Das so recorded u/s 161 of the Cr.P.C. by those officers with that of their statements so recorded u/s 164, Cr.P.C. before the Judicial Magistrate. Copy of the statement of the present petitioner (accused) so recorded u/s 164, Cr.P.C. on 18-8-95 is also filed for perusal. By referring to the relevant portions of these statements of the material witnesses it is pointed out that taking these statements as a whole, it transpires that ingredients particularly of Section 114, IPC is even not met with and thus there was no material before the learned Sessions Judge as to arraign this petitioner and instead deciding to frame charge against him, he would have been discharged. The present petitioner, it is submitted, was not even remotely connected with the said incidence and the question with regard to his abetting the offence does not at all lie. Materials on record did not disclose as submitted as far as this petitioner is concerned in any way involved committing the offence for which at present he has been charged in the present Sessions Case. Hence the framing of charge against him is not tenable and liable to be set aside and quashed. The learned Sessions Judge was only expected as to evaluate the materials and documents so made available on their face value and the facts emerging from the statements of Miss Manju Dey, Angshuman Das and this petitioner so given u/s 161 or 164 of the Cr.P.C. did not at all disclose that the present petitioner had abetted the offence. It is also submitted that the impugned order dated 30-6-99 is not a speaking order and the learned Sessions Judge rather mechanically passed the impugned order framing charge against the present petitioner under Sections 302 114, IPC to which the petitioner pleaded not guilty. In support of these contentions on behalf of the petitioner two reported cases are also cited State of Karnataka Vs. L. Muniswamy and Others, and Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, In the first case so cited it is pointed out by

referring to its para 7 that under the provisions of Section 482, Cr.P.C. this Court is entitled to quash the proceeding if it comes to the conclusion that allowing the proceeding to continue would be abuse of the process of the Court and since before the learned Sessions Judge there was not even prima facie material as to frame charge against the present petitioner, it is a fit case for interference and exercising powers u/s 482, Cr.P.C. The Sessions Judge while hearing on the point of charge only has jurisdiction to frame appropriate charge as the facts may justify or the circumstances may warrant and not otherwise. Few bits here and few bits there on which prosecution proposes to rely according to the learned counsel for the petitioner are woefully inadequate for connecting the present petitioner in the present case howsoever, one may attempt to weave those bits into a presentable whole. With reference to the second reported case so cited it is pointed out that while hearing on the framing of charge, the duty of the Court is to evaluate the material and documents on record with a view to find out if the facts emerging therefrom at their face value discloses involvement of the present accused to whom the Court proposed to frame charge and the Court may for this limited purpose sift the evidence as it cannot be expected at this initial stage to accept all that the prosecution states as gospel truth. Summing up thus the prayer is that impugned order dated 30-6-99 framing charge against the present petitioner Md Fatiur Ali (driver) be set aside rather the whole proceeding as far as the present petitioner Md Fatiur Ali is concerned be rather quashed in the background of the arguments advanced as detailed above.

5. Mr. DK Das, learned special P.P., CBI on the other hand controverting the arguments so advanced by the learned senior counsel for the petitioner has emphatically submitted that in the present case in the background of the material/documents so made available to the learned Sessions Judge in Sessions Case No. 9(K)/99, the learned Court below was perfectly justified as to meet the ends of justice passing orders u/s 228(1)(b) of the Cr.P.C. framing charge under Sections 302 114, IPC against Md Fatiur Ali also finding prima facie material and reasonable likelihood of his involvement-abeting the offence. Shri Das, the learned Special P.P., CBI has referred to Section 107 of the IPC and has submitted that in the background of the materials available (Annexures-III to VIII) ingredients of this section is met with by looking into the material so collected on its face value that this petitioner intentionally aided the principal accused as either prior to or at the time of commission of the offence which facilitated such commission of the act and particularly attention is drawn to Sub-section (2) of Section 107 of the IPC also submitting that abetment emerged because of the conspiracy so entered into for the fulfilment of the particular act, in the instant case, resulting into double murder. By referring casually to the statement of material witnesses so recorded by the Judicial Magistrate at different occasions u/s 164 of the Cr.P.C. with that of the statements of the witness said to be the eye witness namely Miss Manju Dey, the maid servant and Master Angshuman the minor son of Smti Karabi Das (since deceased) and that of the statement of the present petitioner so also recorded u/s 164, Cr.P.C.

(Annex-VIII) at least following facts as submitted come into light :

(a) That the present petitioner Md Fatiur Ali was very much present at the time of the occurrence with the car of Shri Bhagya Kalita in the courtyard of the flat occupied by Shri Ujjal Kr Das at the relevant time and that Md. Fatiur Ali happened to be the permanent driver of Shri Bhagya Kalita who is charged in this case directly u/s 302 of the IPC. As per this petitioner's statement (Annex-VIII) that too so recorded u/s 164, Cr.P.C. without explaining with regard to his sinister silence from the date of occurrence to 18-8-95 and after a long delay giving the statement of his carrying Sri Bhupen Medhi, accused who is absconding on the same vehicle and Sri Medhi entering into the house at the alleged time and place of occurrence of 31-7-95 leaving this petitioner on car and on hearing shots petitioner approaching, finding gun in Sri Medhi's hands and claiming Sri Medhi to be the person committing double murder.

(b) By the statement of Master Angshuman it was the security guard of Shri Bhagya Kalita who committed the murder along with one more man not known to him but claimed to identify if brought before him.

(c) In the statement of Miss Manju Dey it is stated that this driver, Md Fatiur Ali used to come so often driving the car of Sri Bhagya Kalita when Sri Bhagya Kalita used to visit Smti Karabi Das's place frequently. This maid servant in her statements so recorded altogether four times u/s 161 164, Cr.P.C. has come forward to say lastly that Shri Bhagya Kalita was the main participant and she has seen him fleeing away on his car on which he had come and the learned Court below has thus rightly presumed in the background of the materials so available that it was this petitioner to whom Miss Manju Devi meant to be the driver employed at the relevant time bringing Sri Bhagya Kalita at the place of occurrence and taking him away after completion of the crime.

6. That being the position it is pointed out that impugned order under challenge thus does not require any interference. Mr. Das, learned Special P.P., CBI has also submitted that the chargesheet was so submitted by the CBI, Special Branch after thorough and threadbare investigation and in course of trial after examining the prosecution witnesses if no evidence is so collected substantiated against the present petitioner he is liable to make prayer for his acquittal under the provisions of Section 232 of the Cr.P.C. and at the same time in course of trial if any other material is so collected, the Court is, at liberty as to alter or add charge against any of the accused facing trial before pronouncement of the judgment and that being so at this stage when there is prima facie material as to show that there was sufficient ground for framing charge when this accused had committed offence exclusively triable by the Court of Session in that light charge is so framed in writing explaining the same to the accused, after hearing the learned P.P. and the lawyer appearing for the accused, it would be dangerous as to set aside the impugned order under challenge and quash the proceeding as far as this petitioner is concerned. In support of his this contention, Mr. Das, learned special P.P., CBI has also claimed himself to be fortified on this point by some of

the reported cases. By referring to Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, and by also particularly referring to its head note B and Paragraphs 18, 21 to 23 it is pointed out that material on record capable of inferring a strong suspicion about commission of offence is sufficient for framing charge because only the general consideration of the materials placed before the Court at the time of hearing on the point of framing charge is to be looked into and presumptive opinion after such scrutiny of the materials is sufficient as to pass necessary orders framing if the materials support participation of the accused sent up for framing appropriate charge against him. The other reported case so cited on behalf of the CBI is Tulsabai and Another Vs. State of Madhya Pradesh, CBI Special P.P. Mr. Das has particularly referred to its paragraphs 7 and 9 and has submitted that at the time of framing of the charge, the Court need not make elaborate enquiry. The order framing charge even cannot be interfered if prima facie materials are found though reasons for framing charge not detailed in the order under challenge. Mr. Das, learned special P.P., CBI has also referred to a reported case State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, and has submitted that the quashing of a criminal proceeding at the initial stage by the High Court is to be done sparingly u/s 482, Cr.P.C. and if on the basis of allegations a prima facie case is made out, High Court has no jurisdiction as to quash the proceedings and at the initial stage as in the present case because only charge is framed it is not justified in judging probability, reliability or genuineness of the allegations and thus prayer to quash the proceeding should be exercised only in extraordinary circumstances and in the instant case it is submitted that the petitioner has failed to show any such extraordinary circumstance. By citing Radhey Shyam Vs. Kunj Behari and Others, it is pointed out that in the present case also investigation was so conducted by the CID and the Apex Court has held in this case that order quashing the charge by exercising powers u/s 482 Cr.P.C. was bad because at the stage of hearing on the point of charge meticulous consideration of evidence and materials by the Court was not required at that initial stage. Hence concluding his argument, the learned Special P.P., CBI has submitted that since there is no merit in this criminal revision petition it can safely be set aside in the background of the materials/documents so made available at the time of hearing on the point of framing charge by evaluating the same on its face value, the order so passed by the learned Sessions Judge u/s 228(1)(b) of the Cr.P.C. is quite justified and it does not warrant any interference and that being the position this criminal revision petition be dismissed.

7. After hearing both side lawyers also after going through the Annexures so filed particularly Annexures-III to XI, keeping into consideration reported cases so cited on behalf of both the sides, I find that there is much of strength in the arguments so advanced by the learned P.P., CBI detailing the materials so available before the Court below at the time of hearing on the point of charge when the impugned order was so passed and charge against the present petitioner was so framed under Sections 302 114 of the IPC. That being the

position in my considered opinion impugned order under challenge does not require any interference that can very well be said to be justified. Churning or sifting of evidence, separating grain from the chaff and weighing of different available alternatives are the domain of the Court when the trial commences and the evidence are adduced but at this preliminary stage while hearing on the point of framing charge or discharge, the matter is to be decided by the Court in the background of prima facie material so collected and time sequencing the facts only. The statement of the present petitioner so recorded u/s 164 Cr.P.C. (Annexure-VIII) is no less important to be looked into at its face value and there is material so available to presume involvement of this present petitioner in the offence exclusively triable by the Court of Session and thus charge being framed under Sections 302 114, IPC. No roving enquiry has to be made into the pros and cons of the matter on the point of charge by the Court below as if he was conducting the trial and that standard of test is not required at Section 227 228 stage of the Criminal Procedure Code even presumptive opinion constituting the offence would justify framing of charge because the material so made available to the Court below at that time is only to be seen on its face value. In the background of the circumstances so shown as cropping up by going through the Annexure so filed (Annexures-III to XI), in my considered opinion this criminal revision petition so preferred for setting aside the impugned order dated 30-6-99/ quashing the whole proceeding against the present petitioner Md Fatiur All has got no merit, impugned order does not require any interference by exercising powers u/s 482, Cr.P.C. and consequently the same is dismissed.

The matter stands accordingly disposed of.