

(2018) 01 BOM CK 0066
In the Bombay High Court
Case No : 64 of 2017

GOVIND KUNDARGI?S/o Manik Kundargi Vs State of Goa & Anr.

Date of Decision : 17-01-2018

Acts Referred:

Indian Penal Code, 1860, Section 120B, Section 307 - Punishment of criminal conspiracy - Attempt to murder

Citation : (2018) 01 BOM CK 0066

Hon'ble Judges : PRITHVIRAJ K. CHAVAN

Bench : Single Bench

Advocate : Vibhav Rajiv Amonkar,?Mahesh Amonkar

Final Decision : Disposed Of

Judgement

1. Heard Mr. Vibhav Amonkar, learned counsel for the petitioner.
2. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties. Mr. Mahesh Amonkar, learned Additional Public Prosecutor waives notice on behalf of the respondents.
3. The petitioner takes exception to an order dated 2nd August, 2017 passed by the learned Additional Sessions Judge, Panaji, directing framing of a Charge against him under Sections 307 and 120B of Indian Penal Code.
4. Briefly stated the facts are that, the petitioner along with one more accused are charge-sheeted by Police Station, Panaji, alleging that by hatching a criminal conspiracy, the petitioner and other accused on 1st April, 2015 between 23.00 to 23.30 hours near Adarsh Colony Circle, Carnazalem, Goa, assaulted one Ronaldo Barretto, who is the brother of the complainant, by attacking on his head by means of an iron rod resulting into grievous hurt. After investigation, a charge-sheet came to be filed and the learned Additional Sessions Judge, by the impugned order, framed a charge as above by stating that there is sufficient material on record against the petitioner.
5. I heard Mr. V. Amonkar, learned counsel appearing for the petitioner.

6. He submits that there is no material on record in order to justify framing of Charge against the petitioner either under Section 120B or 307 of IPC. It is also submitted by the learned counsel that even the victim has not whispered anything, as regards the complicity of the petitioner, in the alleged offence. In support of his submissions, the learned counsel placed reliance on a authorities of this Court reported in 2007(3) Mh.L.J.774 in case of Arun Gulab Gawli Vs. State of Maharashtra and (2008)10 SCC 394 in case of Yogesh alias Sachin Jagdish Joshi Vs. State of Maharashtra.

7. On the other hand, learned Additional Public Prosecutor Mr. Amonkar, submits that except the statement of the complainant, who stated that he had an information about the involvement of the petitioner in the crime, there is nothing on record.

8. I have gone through the record as well as the statements of the witnesses including the medical report.

9. The complaint dated 2.3.2015 lodged by one Anthony Barretto, the brother of the injured victim, reveals that on 1st April, 2015 he received an information from his elder brother on a mobile-phone about the assault on his younger brother Ronaldo Barretto by Ganesh Venkatesh Panjal. After receiving an information, the complainant reached Campal Clinic Hospital immediately at 23.40 hours. It reveals from his complaint that said Ganesh Panjal had informed Ronaldo to come near Adarsh Colony around 23.00 hours. Accordingly, Ronaldo went near Adarsh Colony on his bike. Ronaldo returned to their restaurant at about 23.30 hours with head injury and informed his elder brother that he was assaulted by four persons along with Ganesh Panjal. The injured was immediately shifted to G.M.C., Bambolim from Campal Clinic, as he suffered serious head injuries. In the complaint, it is stated that thereafter the complainant came to know from some sources that along with Ganesh Panjal, one Rahul, (full name and address not known) and Govind i.e. the petitioner (whose full name and address also not known to the complainant) had common intention, who hatched criminal conspiracy to kill Ronaldo. This is the only material on record from which, it appears that even the complainant had not first-hand knowledge nor there is anything in his complaint as to from whom he gathered the information about the involvement of the petitioner in hatching conspiracy. It is not even his contention that the petitioner was involved in the actual assault.

10. Statement of the injured victim, which also came to be recorded by the Executive Magistrate on 2nd April, 2015, reveals that he had no enmity with Ganesh Panjal or any other person. However, he does not know as to why Ganesh Panjal had assaulted him with an iron rod. His statement further indicates that he does not remember who else were present at the time of incident. It can be thus seen that no prima facie case has been made out by the prosecution from the material placed on record to frame a charge against the petitioner. There is even no material on record to give rise to any suspicion

against the petitioner, as distinguished from grave suspicion. The law is well settled that 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, then he would be fully within his right to discharge the accused. It is not expected 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 unrebutted, make a conviction reasonably possible. This is what ratio laid down by the Hon''ble Supreme Court in case of Yogesh alias Sachin Jagdish Joshi (cited supra). Even there is no material on record to show that the petitioner hatched a criminal conspiracy with other accused in the sense that there was meeting of minds of two or more persons for doing an illegal act or an act by illegal means which is a sine qua non for showing the offence of criminal conspiracy.

11. This Court in case of Arun Gulab Gawali (cited supra) has observed in paragraphs 25 to 29 thus:

"25. The offence alleged in the present case is punishable Under Section 387 of I.P.C. That is kidnapping or abducting of any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or knowing it to be likely that such person will be so subjected or disposed of. In the present case, the applicant is not accused of kidnapping or abducting at all. Once this is an admitted position, then on the basis of some statement of the employer of the applicant which is also on information or the co-accused, the applicant cannot be held to be guilty prima facie of criminal conspiracy to commit the same. The basic ingredient of offence of criminal conspiracy namely a agreement to do or caused to be done an illegal act or an act which is not illegal by illegal means is not satisfied.

26. I have considered this application on the touch stone of the definition of criminal conspiracy as well. I find that the material placed on record is totally lacking in making out a prima-facie case against the applicant-accused. The suspicion, in the facts of the present case, is not enough to proceed against the applicant. Therefore, as observed by the Supreme Court, no charge can be framed against the applicant herein. Even the offence of criminal intimidation is not made out. A bare perusal of the provisions in IPC defining "criminal intimidation" would make it clear that as far as present applicant is concerned, there is no material to arrive at a prima-facie conclusion that the applicant committed an offence Under Section 306 (Part II) of IPC.

27. Mr. Pol would however rely upon the judgment of this Court pertaining to this very applicant. The said judgment is reported in 1998 Criminal Law Journal Pg. 4481 (Arun Gulab Gawli v. State of Maharashtra). However, perusal of the same would indicate that there the material produced indicated strong suspicion and the Court was therefore justified in framing the charges. Thus, this judgment is distinguishable on facts.

28. For the above reasons, I am of the opinion that the learned Judge has

committed a grave error apparent on the face of the record in dismissing the application of the applicant for discharge. There is merit in the contentions of the applicant that there is absolutely no material to connect the applicant with the offences alleged. This is a fit case for exercise of revisional jurisdiction of this Court in as much as the court below has overlooked the fact that the ingredients of the offence as alleged against the applicant are prima facie not satisfied in the facts of this case. The learned Judge ought to have exercised the jurisdiction vested in him Under Section 227 of the Code of Criminal Procedure and discharged the applicant from the Sessions Case. His order refusing to do so suffers from total non application of mind and can safely be termed as perverse.

29. In the result, the impugned order is quashed and set aside. The applicant-accused is discharged from the Sessions Case No. 894 of 2004. Rule is made absolute in terms of prayer Clause (c)".

12. The ratio is clearly applicable to the present set of facts.

13. The learned trial Court in the impugned order failed to apply its judicial mind to the entire material on record by only placing reliance on a stray statement of the complainant as to what he had heard about the involvement of the petitioner in the instant crime and then proceeded to frame a charge, which is unacceptable.

14. The impugned order, therefore, needs to be set aside in respect of the petitioner. As such, the petition is allowed. The impugned order passed by the learned Additional Sessions Judge dated 2.8.2017 is set aside and the petitioner stands discharged.

15. Rule is absolute in the above terms. The Criminal Revision Application stands disposed of accordingly.