
(2003) 11 P&H CK 0091
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1870 of 2003

Hardev Singh

APPELLANT

Vs

Alia Singh

RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Penal Code, 1860 (IPC) — Section 34

Citation : (2003) 10 CriminalCC 180 : (2004) 2 RCR(Criminal) 128

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Sudhir Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed u/s 401 of the Code of Criminal Procedure, 1973 prays for quashing of order dated 11.6.2003 passed by the Additional Sessions Judge, Chandigarh, framing charge against the petitioner u/s 302 read with Section 34 IPC in case CBI FIR No.21 /90 dated 29. 1.1990.

2. The case has a chequered history, which may briefly be noticed. On 8.7.1985 one Inderjit Singh s/o All Singh was found hanging in House No. 1895, Sector 34-D, Chandigarh, which belonged to the accused-petitioner Hardev Singh. Inderjit Singh deceased had taken one Room on rent on the ground floor from his landlord Hardev Singh on 26. 1.1985. Hardev Singh lodged a report vide DDR on 8.7.1985 at P.S. Sector 34, Chandigarh. ASI Radhey Sham and Constable Hoshiar Singh visited the scene of crime and after investigation, ASI Radhey Sham opined that it was a case of suicide. On 8.7.1985, postmortem examination was conducted on the dead body of Inderjit Singh by Dr. S.K. Garg. The complainant Alia Singh on the basis of the postmortem report came to know that apparent cause of death of his son was asphyxia on account of hanging. He submitted a complaint to the Home Minister with a request, which resulted into fresh investigation. An inquiry was conducted and the earlier finding was

reiterated that the case of death was suicide by hanging. However, the enquiry was entrusted to one Sita Ram, Inspector as per the orders of the I.G. Police, Chandigarh, who reported vide his report dated 19.8.1985 that a clear case of murder is made out. The report was accepted by the higher authorities and FIRNo.482/85 dated 24.9.1985 at P.S. Sector 34, Chandigarh was registered against the accused-petitioners namely Hardev Singh and his son Harpreet Singh. They were taken into custody and later released on bail. Before the investigation could be completed, Inspector Sita Ram was repatriated to his parent State of Punjab and investigation was carried by other police officer, which concluded that the death of Inderjit Singh deceased was not homicidal. The complainant Alia Singh filed a petition before the Supreme Court seeking directions for investigation by an independent agency. The prayer of Alia Singh was accepted and it was ordered that investigation should be carried by S.P. Patiala. During the course of investigation, Investigating Officer could not collect the evidence for charging the accused-petitioners and complainant again filed CWP No.820 of 1990 before the Supreme Court seeking reinvestigation by C.B.I. This time, the investigation was entrusted by the Supreme Court to Sh. A.K. Sharma, Inspector, C.B.I. Chandigarh Branch. On account of lack of knowledge of Punjabi language, Sh. A.K. Sharma, Inspector could not proceed with the investigation, which was entrusted to Sh. D.S. Mann, inspector and thereafter it was entrusted to Sh. S.L. Gupta, DSP, CBI. On the completion of investigation, Chandigarh Branch CBI filed a cancellation report in the Court stating that Inderjit Singh deceased committed suicide. The CBI also charge sheeted Inspector Sita Ram for having collected evidence against the accused-petitioners in connivance with complainant Alia Singh by planting blood and other evidence. On 22.12.1994, the CJM, Chandigarh directed reinvestigation of the case by some senior officer for bringing out true facts, if any, to light. The CJM did not agree with the findings recorded by the CBI that Sita Ram, Inspector had planted blood on the clothes of the deceased Inderjit Singh, the basic ground for the afore-mentioned belief was that blood stains on clothes of the deceased were found on 8.7.1985 when the investigation of the case was undertaken by ASI Radhey Sham, who subsequently handed over one banian (under shirt), one Pant etc. of the deceased to Inspector Sita Ram. In the report of handing over and taking over clothes dated 29.8.1985, it is clearly mentioned that there were blood stains on those clothes. The investigation of the case was, therefore, entrusted to Sh. K.S. Kanungo, S.P., CBI, who in his report recommended prosecution of the accused-petitioner, his wife as well as his son Harpreet Singh under Sections 302, 218, 193 read with Section 34 PC. He also recommended prosecution of Khushwant Singh son of Hardev Singh u/s 302/34 IPC, Dr. S.K. Garg u/s 193, 218/34 IPC. Sh. K.S. Kanungo further reported that Inspector D.S. Mann, Sh. S.L. Gupta and Superintendent of Police R.K. Pachhanda were not only responsible for deliberate letting of the accused-petitioners but were also responsible for roping in the innocent persons. Despite these recommendations, the senior officers advised for filing of cancellation report. The cancellation report was filed on 14.12.1998 vide which the complainant was directed to adduce

evidence in support of the allegations levelled in the protest application. The complainant examined 10 witnesses including himself CW-1, R.S. Verma, Director from C.F.S.L.Laboratory, who inspected the scene of crime, Dr. Inderjit Dewan CW-2, who headed the Board of doctors constituted to re-examine the postmortem report of Inderjit Singh. As per the opinion expressed by the Board, it was a case of strangulation by ligature and after that the deceased Inderjit Singh was hanged by a turban from a fan. CW-3, Inspector Sita Ram, CW-4 A.K. Tandon, who deposed that Dr. S.K. Garg, who conducted the post-mortem on the dead body of the deceased Inderjit Singh was subjected to departmental enquiry and proved the same Ex.PW-4/G. CW-5 Jagjit Puri, who was the Enquiry Officer against Dr. S.K. Garg, CW-6 S.I.Mai Chand, who was working as a police photographer, CW-7 Inspector G.S. Mann (wrongly mentioned as CW-6), CW-7 Inspector Tribhuwan, CW-8 Dr. H.B. Rao (wrongly mentioned as CW-7), CW-8 Kirti Chandra Kanungo, who had opined that it was a case of murder, CW-9 Suraj Pal, who proved his report concluding that it was a case of murder and not of suicide, the complainant Alla Singh himself. On the basis of the preliminary enquiry, the CJM, Chandigarh, passed an order on 20.4.2001 and summoned the accused-petitioners for offences punishable u/s 302 read with Section 34 IPC. Thereafter, the case was committed to the Court of Sessions vide order dated 18.2.2002 after supplying the copies of statements and documents as per the mandates of Section 208 Cr.P.C.

3. On 20.2.2002, the Additional Sessions Judge, Chandigarh, set aside the commitment order and remanded the case back to the CJM, directing him to comply with the mandatory provisions of Section 202(2) of Cr.P.C. by recording the statements of all the remaining witnesses as per the list submitted by the complainant. In pursuance to the aforementioned order both the parties appeared before the CJM and the case was fixed for recording of remaining evidence of the complainant. The complainant Alla Singh made a statement that in total 12 witnesses had already been examined in support of his protest petition and he did not wish to lead any further evidence as mentioned in the list of witnesses. On the oral prayer of the complainant the evidence on protest petition was closed by the CJM. Thereafter, he closed his evidence on protest application in writing by giving up rest of the witnesses at that stage. The CJM has vide his order dated 21.4.2003 directed the parties to appear before the learned Sessions Judge on 6.5.2003 at 10 A.M. The operative part of order dated 21.4.2003 passed by the CJM reads as under:-

"I have heard the arguments advanced by both the parties and have gone through the entire case file including the order passed by learned Addl. Sessions Judge, Chandigarh and find that complainant Alla Singh has closed his evidence by giving up remaining witnesses mentioned in the list of witnesses, therefore, the compliance of provisions of order 202(2) Cr.P.C. have been made by the complainant as observed by the learned Addl. Sessions Judge, Chandigarh in his order dated 20.2.2003 vide which only the commitment orders dated 14.8.2001 and 18.2.2002 were set aside by the learned Additional Sessions Judge,

Chandigarh and has not set aside the order of summoning passed by the then Id. CJM, Chandigarh on 20.4.2001, now when the complainant has not led any fresh evidence and has only complied with the provisions of Section 202(2) Cr.P.C. by giving up the remaining witnesses mentioned in the list of witnesses appended by the complainant with the protest petition which envisages that no fresh evidence/document or statement of witnesses has been pressed into service by the complainant, therefore, I commit this case again to the Court of learned Session Judge, Chandigarh for 6.5.2003 as the offence u/s 302/34 IPC is exclusively triable by the Court of learned Sessions Judge. The accused are directed to appear before learned Sessions Judge, Chandigarh on 6.5.2003 at 10 A.M. sharp. The Public Prosecutor be reported about the commitment of the case. Ahlmad is directed to send the file complete in all respects well in time."

4. The Additional Sessions Judge on 11.6.2003 came to the conclusion that the evidence on record shows that there were sufficient grounds warranting framing of charge against the accused-petitioners. The afore-mentioned conclusion was recorded after the detailed analysis of the evidence and the factual background of the case. The argument that the complainant has given a list of 42 witnesses and all of them were not examined, which shows violation of proviso to sub-section (2) of Section 202 of Cr.P.C. was rejected. The basic reason for rejecting the afore-mentioned contention is (a) that it is the wish of the complainant whether to examine all the witnesses or some of them; (b) that no obligation could be imposed on the complainant to examine all the witnesses. Therefore, it held that the defence of the accused-petitioners is likely to be prejudiced. Feeling aggrieved, the accused-petitioners have approached this Court against the order dated 11.6.2003 framing charge against the accused-petitioners.

5. Mr. Sudhir Sharma, learned counsel of the petitioners has argued that proviso to sub-section (2) of Section 202 of Cr.P.C. is mandatory and once a list of 42 witnesses was furnished, then it was obligatory for the complainant to examine all the witnesses. The learned counsel has also argued that the order passed by the learned Additional Sessions Judge dated 11.6.2003 amounts to review of his own order dated 20.2.2003, which is impermissible in law. According to the learned counsel, once directions have been issued by the Additional Sessions Judge in his order dated 20.2.2003 (Annexure P-3), then it was the duty of the CJM to ensure that the statement of all the witnesses are recorded and only thereafter the case could be committed for the trial to the Sessions Court. The learned counsel has expressed a serious apprehension that the defence of the accused-petitioners would be unduly prejudiced by non-examination of all the 42 witnesses listed by the complainant. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of State of Himachal Pradesh Vs. Krishan Lal Pardhan and Others, a Full Bench of Kerala High Court in the case of Moideenkutty Haji v. Kunhikoya, 1987(2) Ker 485 and another judgment of the Supreme Court in the case of Rosy v. State of Kerala, 2000(1) RCR(Cri.) 414 and submitted that the defence of the accused-petitioners is likely to be prejudiced by non-observance of mandatory provisions

of proviso to sub-section (2) of Section 202 of Cr.P.C. He has then referred to certain judgments of this Court in the case of Charanjit Singh v. Shingara Singh, 1979 CLR (P&H.) 261, a Division Bench judgment of this Court in Rajpal Sood v. Ravinder Nath Vohra, 1977 PLR 674 and another judgment in the case of State v. Kapur Singh, 1979 PLR 161 to argue that the nature of the provisions of proviso to sub-section (2) of Section 202 of Cr.P.C. is mandatory.

6. After hearing the learned counsel and perusing the record, I am of the considered view that this petition is liable to be dismissed. The complainant Alla Singh has produced 12 witnesses before the CJM, which is the basis of the summoning order passed by him on 20.4.2001. However, the commitment orders dated 14.8.2001/18.2.2002 were set aside by the learned Addl. Sessions Judge and the case was remanded back to the CJM with a direction to follow the mandatory provisions of sub-section (2) of Section 202 of Cr.P.C. and examine all the witnesses named in the list furnished by the complainant, the CJM gave amply opportunity to the complainant to lead further evidence in accordance with the list of witnesses. However, it has been recorded by the CJM that the complainant did not want to lead any further evidence. The evidence was also closed by the CJM on the protest petition on the oral request made by the complainant. Thereafter, the complainant closed his evidence on the protest petition in writing by giving up the remaining witnesses at that stage. The aforementioned factual position is evident from the order dated 21.4.2003 passed by the CJM (Annexure P-4). It is also clear that there is no obligation imposed by any law on the complainant to exhaust the list of the prosecution witnesses. Section 202 of Cr.P.C. reads as under:-

"Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him u/s 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

(2) In an enquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

7. A perusal of proviso to sub-section (2) makes it clear the Magistrate is to call upon the complainant to produce all his witnesses and examine them on oath. The obligation imposed on the Magistrate is to ask the complainant to produce all his witnesses. There is no further obligation on the complainant to produce all prosecution witnesses. He can produce all his witnesses and examine them on oath. This Court in *Vijay Kumar Vs. State of Haryana and Another*, has held that it is not incumbent upon the committing Magistrate to record the statement of all the remaining witnesses particularly if the complainant himself is not relying upon them. On that basis, the order of commitment cannot be held to be invalid. It may be desirable to examine all the witnesses but it is not a fatal legal irregularity. The provision appears to be permissive in nature. Moreover, on the repeated queries by the Court, counsel for the petitioner has failed to disclose as to how the case of the accused-petitioners would be prejudiced by non-examination of other witnesses. It is further appropriate to notice that the occurrence in this case is of the year 1985 and there is sufficient evidence to frame charge against the accused-petitioners. It cannot be concluded that there is no evidence to support the charge. On the record, there are statements made by Dr. R.S. Verma, CW-1, Dr. Inderjit Dewan CW-2, Sita Ram Inspector CW-3, A.K. Tandon, CW-4 and many others indicating that it is not a case of commission of suicide by the deceased Inderjit Singh but a case of homicide. The Additional Sessions Judge did not rightly advert to every detail of the statements because it would amount to pre-judging the whole issue but there are sufficient indications supporting the conclusion that prima facie case for framing of charge u/s 302/34 IPC is made out. Therefore, the charge sheet framed by the learned Additional Sessions Judge vide his order dated 11.6.2003 cannot be quashed even on that ground. The argument of the learned counsel that the provisions of sub-section (2) of Section 202 of Cr.P.C. are mandatory, which would impose an obligation on the Magistrate to record the statements of all those witnesses, who have been named in the list furnished by the complainant, would not even arise on the facts of the case because the Additional Sessions Judge accepted that argument and vide his order dated 20.2.2003 remanded the case back to the Magistrate. The Magistrate after granting opportunity to both the sides recorded the conclusion that the complainant is not keen to examine any more witnesses and he had closed his evidence in writing in support of the protest petition by giving up remaining witnesses as that stage. As already observed in the paras above, the duty of the Magistrate according to the mandatory provisions stand exhausted by calling upon the complainant to examine all the witnesses. The Magistrate cannot compel the complainant to examine all the prosecution witnesses. Moreover, it has not been shown as to how the prejudice would be caused to the accused-petitioners by adopting the course taken by the

Magistrate. In Vijay Kumar's case (supra), this Court has held that there is no legal obligation cast on the Magistrate while committing the case to the Sessions Court to record statement of all the witnesses. Therefore, there is no substance in the afore-mentioned argument.

8. The other argument that the impugned order dated 11.6.2003 (Annexure P-1) passed by the learned Additional Sessions Judge framing charge against the accused-petitioners amounted to reviewing the earlier order dated 20.2.2003 (Annexure P-3) passed by him is also not acceptable because the Magistrate after granting opportunity has come to the conclusion that the complainant did not wish to produce any more witnesses at that stage. The provision of sub-section (2) of Section 202 of Cr.P.C. stood complied with. Therefore, there is no substance in this argument. The petition is, thus, liable to be dismissed.

For the reasons recorded above, this petition fails and the same is dismissed.