

(2008) 05 DEL CK 0005

In the Delhi High Court

Case No : Criminal Rev. Petition No. 42 of 2000

Madan Lal Kapoor

APPELLANT

Vs

Rajiv Thapar and Others

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 176, 200, 202

Penal Code, 1860 (IPC) — Section 109, 120B, 304B, 406, 498A

Citation : (2008) CriLJ 4788 : (2008) 150 DLT 744 : (2008) 105 DRJ 531

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Shreespal Singh, for the Appellant; Pawan Sharma, Surya Kant Singla, Ajay Vir Jain and Shanto Mukerjee, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—This Criminal Revision Petition has been preferred u/s 397 of the Code of Criminal Procedure (the Code) to impugn the order dated 07.08.1999 passed by the Additional Sessions Judge, Delhi, in Sessions Case No. 75/1999 "Madan Lal Kapoor v. Rajiv Thapar etc.", whereby the learned ASJ has discharged the accused in the aforesaid complaint case filed by the petitioner under Sections 304B/498A/406/109/120B IPC.

2. The daughter of the complainant/ petitioner herein, Monica, was married to respondent No. 1 on 30.11.1991. She was a medical doctor having MBBS degree. At the time of death and she was doing a diploma course in Gynecology and Obstetrics at New Civil Hospital, Surat. Respondent No. 1 Rajiv Thapar was then posted as Assistant Director in the Directorate of Revenue Intelligence, Surat. Respondent Nos. 2 to 5 are the father, brother, sister-in-law and mother, respectively, of the respondent No. 1. On 26.09.1992 Monica died while living with her husband at Urmil Heart Hospital, Surat. On 27.09.1992, the dead body of Monica was brought by her in-laws to Delhi. The complainant came to Delhi

from Chandigarh, where he resides. He called the police and the police informed the SDM. On 28.09.1992 the SDM started inquest proceedings u/s 176 of the Code. A team of four experts was appointed to conduct the post mortem of the deceased. The petitioner claims that he repeatedly made complaints to various authorities in Surat and Delhi to the effect that there were dowry demands from the respondents and that his daughter had been done to death by the respondents on account of the said demands not being met. Eventually, on 26.07.1993 the petitioner made a complaint u/s 200 of the Code in the Court of the Metropolitan Magistrate. The Magistrate recorded the statement of the petitioner and his son as C-1 and C-2. On 24.08.1995 the learned Magistrate took cognizance and summons were issued to the respondents. On 15.04.1997 the respondents moved an application before the learned Magistrate for recalling the summoning order. This application was rejected by the learned MM on 23.05.1998. The learned Magistrate supplied copies of the complaint and the statements to the respondents and committed the case to the Court of Sessions for trial u/s 208 of the Code. Thereafter, before hearing arguments on the charge, the Sessions Court summoned two of the doctors, who had conducted the post mortem, and recorded the statement of one of the four doctors, namely, Dr. Banerjee. On 07.08.1999 the impugned order was passed, as aforesaid, discharging the respondents.

3. This Revision Petition came up for hearing before this Court on 19.10.2000. The same was dismissed by a summary order stating that there is no infirmity in the impugned order. SLP preferred by the petitioner was allowed on 22.02.2002 by the Supreme Court with the direction that this Court should apply its mind independently and pass a reasoned order.

4. The Revision Petition was again dismissed in default for non-prosecution on 11.08.2005. Once again, the SLP preferred by the petitioner was allowed with the direction to the Court to decide the case on merits. That is how the matter is now coming up for hearing.

5. The submission of learned Counsel for petitioner, firstly, is that a perusal of the impugned order would show that the learned Additional Sessions Judge while passing the same has relied on the earlier decision of the Supreme Court in Satish Mehra Vs. Delhi Administration and Another, and keeping in view the dictum laid down by the Supreme Court in that decision, has proceeded to rely on documents and materials produced by the accused/respondents herein at the stage of considering the framing of charge/discharge of the accused. This submission of the petitioner is clearly established on a reading of the impugned order and there can hardly be any argument about the same. I may only reproduce paragraph 9 of the impugned order for this purpose. The same reads as follows:

9. I am reminded of Satish Mehra Vs. Delhi Administration and Another, where the apex court had stated guidelines as to how a court should proceed to determine whether a case for framing of charge is made out or not. In this case,

the Hon^{ble} Supreme Court also stated that the Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated u/s 227 Cr.P.C. It has also been pointed out that if the Sessions Judge is almost certain that the trial would only be an exercise in futility or sheer waste of time. It is advisable to truncate or ship the proceedings at that very stage of the matter. In para 13, their lordship held as follows:

But when the Judge is fairly certain that there is no prospect of the case ending in conviction valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of work-load.

This Court can thus look into the documents produced by the accused at this stage. The documents so produced by the accused are post-mortem report, inquest proceedings recovered by SDM and letters of complainants. Obviously, these documents are indisputable in nature. I may now refer to them."

6. After relying upon the decision in Satish Mehra (supra) the learned ASJ has proceeded to carry out a meticulous and in depth examination of the post mortem report, inquest proceedings recorded by the SDM, the report of CFSL and other documents produced by the accused/respondents before the learned Magistrate along with application seeking recall of the summoning order. The learned ASJ has also referred to the medical texts from various authorities and eventually he has come to the conclusion that there is no ground to charge the accused persons u/s 304B IPC.

7. The submission of learned Counsel for the petitioner is that the decision of the Supreme Court in Satish Mehra (supra) stands squarely overruled by the larger Bench decision of the same Court in State of Orissa Vs. Debendra Nath Padhi, . In the said decision after discussing the various earlier decisions rendered by it, the Supreme Court in para 23 held that "clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

8. On this basis the submission of learned Counsel for the petitioner is that the impugned decision is in the teeth of the decision of Supreme Court in Debendra Nath Padhi (supra) and that it cannot be sustained. He further submits that the learned ASJ has gone into the evidence to find its probative value which is not permitted in law at the stage of framing of charge. He submits that the material brought on record in the case, namely, the complaint and the evidence of C-1 and C-2 has to be accepted as true at that stage. He relies on State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., to support the contention that at the stage of framing of charge probative value of material and record cannot be gone into and the material brought on record by the prosecution has

to be accepted as true, and if on the basis of materials brought on record the Court could come to the conclusion that commission of the offence is probable, a case for framing of charge is made out. He further submits that at the stage of framing of charge the learned ASJ could not have examined the evidence to appreciate whether it is sufficient or not for convicting the accused. For this proposition, he relies State of Madhya Pradesh Vs. Mohanlal Soni, . The Court has only to examine and be satisfied that the prima facie case is made out for proceeding further at the stage of framing of charge. He further submits that the learned ASJ while passing the impugned order has gone into the evidence of the complainant meticulously, which could not be done at the stage of consideration of the matter on charge. He relies on State of Andhra Pradesh Vs. Golconda Linga Swamy and Another, in support of this proposition. Charge can be framed if there are materials showing probability about the commission of the crime as against certainty. He has also placed on reliance in Suresh Kumar Tekriwal Vs. State of Jharkhand and Another, , which is on the same lines as the decision of the Supreme Court in Debendra Nath Padhi (supra).

9. On the other hand, the submission of learned Counsel for the respondents is that at the stage of consideration of the charge or discharge of the accused, the Court is entitled to consider the record of the case and the documents submitted therewith. He submits that the post mortem report, inquest proceedings recorded by the SDM, report of CFSL and the letters of the complainant were part of the record of the case when the same was being considered by the learned ASJ, since these documents had been filed by the learned Magistrate along with the respondents' application to seek recalling of the summoning order. He further submits that the complainant/petitioner had resorted to suppression of relevant materials while filing the complaint. Though, in the body of the complaint, the complainant had made a reference to the conduct of post mortem at Delhi, the complainant had failed to file the same with his complaint. He submits that the learned Magistrate should have required the complainant to produce the said report, since reference had been made to it in the complaint itself and the same was also referred to in the statement of C-1/complainant. He submits that resort to suppression of vital documents and materials by the complainants, the disclosure of which may have persuaded the learned Magistrate not to issue process, cannot act to the prejudice of the respondents by requiring them to respond to the summons and to face trial in a case which, according to them, has no basis. He further submits that the post mortem report, the inquest report and the CFSL report are not the documents of the respondent/accused. These are documents prepared by the statutory authorities on the basis of the complaint made by the petitioner. His submission is that the case made out against the accused is of causing the unnatural death of deceased Monica by the accused on account of the alleged demands of dowry of the accused not being satisfied. Section 176 of the Code obliges the Magistrate, empowered in this behalf, to hold inquest when the case relates to the death of a woman within 7 years of her marriage and any relative of the woman has made request in this

behalf. He, Therefore, submits that the inquest report of the Magistrate ought to have been looked into by the concerned MM even before issuance of process.

10. The Supreme Court in Debendra Nath Padhi (supra) has very clearly and in no uncertain terms held that at the time of taking cognizance or framing of charge, the accused has no right to produce any material. As aforesaid, Satish Mehra (supra) has expressly been overruled which held that the trial Court has the powers to consider even materials which the accused may produce at the stage of Section 227 of the Code. While dealing with the meaning of the expression "the record of the case", as appearing in Section 227 of the Code the Supreme Court in Debendra Nath Padhi (supra) has held that though the word "case" is not defined in the Code, but Section 209 throws light on the interpretation to be placed on the said words. Section 209 deals with the commitment of the case to the Court of Sessions when offence is triable exclusively by it. The said Section provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall send to that Court, the record of the case and the documents and articles, if any, which are to be produced in evidence and notify the public prosecutor of the committal of the case to the Court of Sessions. On this basis, the Supreme Court observed that the record of the case and documents submitted therewith as postulated in Section 227 relates to the case and the documents referred to in Section 209. The Court further observed that no provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

11. The present being a complaint case u/s 208 of the Code, the Magistrate was obliged to furnish to the accused free of cost copy of the following documents:

- (i) the statements recorded u/s 200 or Section 202, of all persons examined by the Magistrate;
- (ii) the statements and confessions, if any, recorded u/s 161 or Section 164;
- (iii) any document produced before the Magistrate on which the prosecution proposes to rely.

12. From the aforesaid, it is evident that documents which are produced by the accused before the Magistrate, as in the instant case, the documents produced along with an application seeks recall of the issuance of process, are not even required to be supplied to the accused at the stage of committal of the case to the Court of Sessions. These documents, Therefore, cannot be classified as "the record of the case". I, Therefore, do not accept the submission of learned Counsel for the respondents that the documents produced by the accused before the learned Magistrate along with their application seeking recall of the issuance of process are a part of the record of the case, which can be looked in to u/s 227 of the Code. The law does not carve out any exception in respect of any document, whether it be a document originating from a public record or any document that may be produced by the accused. Therefore, the submission that

the post mortem report, the inquest report, the report of CFSL etc. were part of a public record and not documents of the accused, also cannot be accepted.

13. The submission of the respondent that the learned Magistrate issued process without application of mind and without even calling for the inquest report and the post mortem report, even though the post mortem report had a reference in the complaint and the statement of C-1 also cannot be accepted at this stage. This is so because the respondents had initially challenged the summoning order before this Court by filing a petition u/s 482 of the Code. That petition was withdrawn with liberty to move the trial Court. Accordingly, the trial Court was approached by the respondents. By a detailed order dated 23.05.1998 that application of the accused was also rejected. That order has attained finality, as it was not challenged thereafter by the respondents. Instead, the respondents chose to participate in the proceedings before the Sessions Court and argued on the aspect of framing of charge/discharge.

14. Another submission of learned Counsel for the respondent is that, in any event, this Court is empowered to quash the complaint by exercising its power u/s 482 of the Code by looking into the documents produced by the accused/respondents. He refers to para 29 of Debendra Nath Padhi (supra) where the Supreme Court has held that in cases where the accused are having to face the trial despite being in a position to produce material of unimpeachable character and sterling quality, the width of the power of the High Court u/s 482 of the Code and Article 226 of the Constitution is unlimited and in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the Court or otherwise to secure the ends of justice within the parameters laid down in State of Haryana and others Vs. Ch. Bhajan Lal and others, .

15. I am, however, not inclined to accept this submission of the respondents at this stage. This is for the reason that the materials and documents produced by the respondents, namely, the inquest report, the post mortem report and the report of CFSL have not yet been led in evidence and proved on record. They cannot be categorised as documents of unimpeachable character and sterling quality, at this stage.

16. For the aforesaid reasons, this petition is allowed and the impugned order dated 07.08.1999 passed by learned ASJ, Delhi is quashed. The parties except respondent Nos. 2 & 5, who are the father and mother, respectively, of the respondent No. 1 and are stated to be about 77 and 71 years of age, are directed to appear before the concerned Sessions Judge on 21.07.2008. Respondent Nos. 2 & 5 are exempted from personal appearance on the next date. However, if they wish to seek further exemption, it shall be open to them to apply to the concerned Court.