

(2015) 04 GUJ CK 0031
In the Gujarat High Court

Case No : Criminal Revision Application (Against Order Passed by Subordinate Court) No. 599 of 2014

Mansukhbhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 201, 212, 227, 228, 239
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2015) 04 GUJ CK 0031

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : Aamirkhan Pathan and Ashish M. Dagli, for the Appellant; J.D. Jhaveri, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J.—Heard Mr. Aamirkhan S. Pathan, learned advocate for the applicant and Ms. J.D. Jhaveri, learned APP for respondent No. 1 - State and perused the record.

2. Petitioner is original accused facing the charges under Sections 302, 307, 324, 143, 147, 148, 149 and 34 of I.P.C. with Section 135 of G.P. Act pursuant to FIR being Ist C.R. No. 158 of 2013 dated 25.11.2013.

3. Petitioner has filed an application at Exh.9 before the Sessions Court at Gondal in Sessions Case No. 22 of 2014 which arises from the aforesaid complaint to discharge him from the charges alleged against him, under Section 227 of the Code of Criminal Procedure. By impugned judgment and order dated 19.9.2014, the second Additional Sessions Judge, Gondal has rejected such application and hence this Revision.

4. If we peruse the factual details, complaint was filed by one Suryakant @ Suresh Keshubhai @ Keshavlal Patel Bhalani resident of Gondal on 25.11.2013

that on the very same day, all the accused whose names are disclosed in the FIR had came to his father on their Wadi and one Bhavesh as well as one fatty man with specks had given a blow with knife on the abdomen of his father, whereby, his father fell down and in between two people have caught his father and three of them have given blow on upper part of the chest of his uncle and when Shantibhai, brother of the complainant, had tried to rescue them, he was also got injured by the blow of knife on his right leg. It is further stated that thereupon he had shouted and, thereby other people from surroundings had gathered there and thereby, the people who were assaulting them had run away in their jeep from the place of incident. It is further stated in the FIR that because of such injuries, father and uncle of the complainant had died on the spot, whereas, his elder brother was shifted to Gondal and then to Rajkot for treatment since his injuries were serious. Therefore, FIR was lodged against Mitesh, Bhavesh, Soni and 3-4 other persons. So far as cause of quarrel is concerned, it is stated that his uncle has sold some land to Soni for which litigations are going on in the Court and, therefore, there was disturbance amongst them. Pending investigation the police has, by letter dated 27.11.2013 added Section 212 and by letter dated 3.12.2013 added Section 201.

5. If we peruse the application at Exh.9 before the Sessions Court filed by the petitioner for getting discharge, it is contended by the petitioner that Panchnama dated 27.11.2013 is got up one which is annexed with the chargesheet and that Panch witness had never been to his house and that he had never committed any offence and that though he was knowing the other accused namely Mitesh Dhakan, Bhavesh Dhakan, Mayur Dhakan, Sanket Dhakan, however, he had never disclosed to the police that they have committed any offence. It is further stated in the application that he has been wrongly implicated in the FIR only because he is Sarpanch and he is of the same caste - Soni alleging that he had never given them shelter in his house. It is further submitted that he has never supported the accused and that he has never been a part of conspiracy, if any, wherein other accused have been involved. It is also further stated that he has been implicated in such offence because of political pressure and that there is no statement in entire chargesheet that he has given a consent and, therefore, there is no evidence and that Investigating Agency has not included the statement of mobile calls so as to ascertain that he had no conversation with other accused either for conspiracy or before committing the crime as alleged in the FIR. It is lastly contended that he even does not know the accused but came to know about them only after this incident.

6. In this background, if we peruse the chargesheet, it becomes clear that there is specific allegation in the chargesheet that present petitioner being accused No. 6 Mansukkbhai @ Khimjibhai @ Sarpanch Son of Narotamdas Ghorda - Soni had given shelter to accused Nos. 1 to 4 in his house, when police was searching them for the commission of offence as disclosed in the FIR i.e. committing murder of two persons and injuring others.

7. I have perused the police papers. However, since trial is yet to commence, it would not be proper to discuss the contents and averments in the police papers by the different witnesses, because it would otherwise prejudice the trial. However, it cannot be said that there is no prima-facie evidence against the present petitioner so as to include him as an accused for committing offence as alleged in the chargesheet i.e. providing shelter to the real accused. To that extent, submission by learned advocate for the petitioner is not correct that there was no prior conspiracy and, therefore, there cannot be charges under conspiracy. Similarly, so far as panchnama of place of petitioner is concerned, when there is positive disclosure that accused were hidden at such place and that place is to be examined, it cannot be said that only because of a reference in the panchnama that decision of the place where the accused had been extended shelter against the Investigating Agency, such Panch is to be discarded. It is true that all such statements and Panchas are yet to be decided for its truthfulness by the Sessions Court and that exercise would be carried out during trial. However, before such exercise is carried out, it cannot be said that such evidence is not correct. So also is the position with some of the statements wherein there is disclosure that accused Nos. 1 to 4 had taken shelter at the house of the present petitioner.

8. Learned advocate for the petitioner has tried to show other statements of other witnesses contending that none of them have stated that petitioner had given shelter to the other accused. However, contents of statement is material and the numbers of statements. Whereas, contents of statement that is to be verified only while evidence is recorded during the trial and, therefore, only because of the statements by the learned advocate for the petitioner that all such statements are not proper, they cannot be discarded as such.

9. It is further submitted by the petitioner that call details for relevant two days was never called for and that he has no knowledge about the commission of offence by accused Nos. 1 to 4. So far as knowledge of all of them is concerned, it seems that by arguing to that effect, probably petitioner has agreed that accused were at his home but it was only because of his lack of knowledge that they have committed murder. However, all such defence theory is yet to be proved during trial and it cannot be presupposed that no witness will support the prosecution case.

10. It is also submitted that some of the statements are though recorded not made the part of chargesheet. However, it is settled legal position that while filing the chargesheet, it is a discretion of the Investigating Agency to include relevant evidence in the chargesheet. Therefore, if accused thinks it proper, considering that particular statement of particular witness is otherwise, and he is not shown as witness in the chargesheet, then he can certainly call upon such person as a defence witness.

11. If we peruse the impugned judgment, I do not find any illegality or irregularity, inasmuch as, the learned Sessions Judge has considered rival

submissions and factual details as well as law point raised before it. Therefore, in absence of any illegality or irregularity, there is no reason to interfere with the impugned order.

12. For my determination, I am also relying upon settled legal position that accused cannot be discharged when there is prima facie evidence against him. For such determination, I am relying upon following judgments;

(1) Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, -

The law regarding discharging the accused u/s.227 of Cr.P.C. is now well settled as decided by the Full Bench of the Apex Court in that the standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of S.277 or S.228 At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence. (2) Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, -

Wherein, the Full Bench of the Apex Court has held that consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there exists sufficient grounds for proceeding with the trial against the accused and with furtherance sufficient ground to proceed, charge shall be framed and that at that such stage, the trial Court has not to marshal the documents produced before it as it would do on the conclusion of evidence for deciding the charge. 12.1 The Apex Court considered the scope of S.227 and opined that Court is not expected to make a roving inquiry into the pros and cons of the issue and weigh the evidence as if a trial is conducted. Accused can be discharged only when there is no prima facie ground to sustain the charge. What is required is the sufficiency of ground to sustain the charge. What is required is the sufficiency of ground for proceeding against the accused and not whether materials on record are sufficient for conviction.

12.2 After considering the provisions of Ss. 227 and 228 of Cr.P.C., Court posed a question whether at the stage of framing the charge, trial Court should marshal the materials on the record of the case as he would do on the conclusion of the trial? The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal with a view to decide the reliability thereof.

12.3 It is well settled that at the stage of framing charge the Court is not expected to go deep into the probative value of the material on record. If on the basis of materials on record the Court could come to the conclusion that the

accused would have committed the offence, the Court is obliged to frame the charge and proceed to the trial.

(3) Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, -

In it is observed that accused cannot be discharged on hypothesis, imagination and far-fetched reasons. (4) State of Maharashtra Vs. Priya Sharan Maharaj and Others, -

It is held that at the stage of framing the charge, the Court has to consider the material with a view to find out if there is ground for presuming that accused has committed an offence or that there is no sufficient ground for proceeding against him and not for the charges by arriving at the conclusion that it is not likely to lead to a conviction. (5) State of M.P. Vs. S.B. Johari and Others, -

It was held that, the Court at the stage of S.227 and S.228 is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. Only prima facie case is to be looked into. The charge can be quashed if the evidence which the prosecutor proposes to prove the guilt of the accused, even if fully accepted, it cannot show that accused committed that particular offence. Thus it is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial. (5) State of Orissa Vs. Debendra Nath Padhi, -

The Apex Court has held that, it is seen from S.227 of the Code that in a case triable before the Court of Session, if the Court on consideration of the record of the case and the documents submitted therewith and after hearing the submission of the prosecution and the accused if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused after recording reasons for doing so. This Section nowhere contemplates an opportunity being given to the accused person to produce evidence in defence at that stage. The section is quite clear that whatever consideration that has to be made by the Court, will have to be based on the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution. If after doing so, the Court comes to the conclusion that there is a ground for presuming that the accused has committed an offence, then the Court shall frame charge u/s.228 of the Code, otherwise it shall discharge the accused under S.227 of the Code. It is further held that: It is clear

that all that the Court has to do at the time of framing a charge is to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of the materials placed before it by the investigating agency. There is no requirement in law that the Court at that stage should either given an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage. (6) State of Maharashtra Vs. Priya Sharan Maharaj and Others, -

Referring to the case of Niranjana Singh Karam Singh Punjabi (supra) held that at the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth and even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out that whether there is any ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (7) State of Madhya Pradesh Vs. Mohanlal Soni, -

The Court while referring to several previous decisions, held that the crystallized judicial view is that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. It is further held that, each case depends upon its particular facts and circumstances and sometime even a remote link between the activities of an accused and the facts of the case may justify a reasonable inference warranting a judicial finding that there is ground for presuming that an accused has committed the offence or at least to presume that the question of his being directly or indirectly involved in the commission of such offence is not to be ruled out. (8) State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., -

A three-Judge Bench of Hon"ble Supreme Court has held that, if on the basis of materials on record a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage. (9) State of U.P. Vs. Udai Narayan and Another, -

The Apex Court has specifically determined in its decision reported in while dealing with the issue regarding discharge of accused from the charges under the

Prevention of Corruption Act, 1988 that scanning and scrutinizing the evidence and materials produced by the prosecution is not permitted at the time of deciding the prayer for discharge and that positive conclusion on material record should be avoided as it may affect the trial. (10) State of Himachal Pradesh Vs. Krishan Lal Pardhan and Others, -

The Apex Court has held that for scrutiny within the limits of S. 239, Cr.P.C., all that is required at the stage of framing of charges is to see whether a prima facie case regarding the commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after evidence is recorded in the case, which cannot be decided on merits without giving the prosecution an opportunity to adduce evidence against the accused. (11) Soma Chakravarty Vs. State through CBI, - It is held as under:

"It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial." 13. Thus, the law on the subject is now well-settled that while considering the discharge application, the Court is required to evaluate the material and documents on record for limited purpose i.e. to find out that whether facts emerged from such material even if taken on their face value, is enough and disclosing the existence of all the ingredients to constitute the alleged offences. The Court may, for this limited purpose, sift the evidence as it cannot be expected at such initial stage to accept all that the prosecution story as gospel truth even if it is opposed to commonsense or the broad probabilities of the case. Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

14. The question whether there is conspiracy and forgery is not an abstract question of law but is a matter of evidence and cannot be considered at this stage. However I have gone through the record of the case and I am of the opinion that there is sufficient evidence on record to prove the case of the prosecution, whereas explanation by the accused is not trustworthy, since not supported by the evidence less prima facie proof.

15. However, considering the submissions by the petitioner, it is made clear that whatever is observed herein is only for the limited purpose of deciding such

Revision Application against impugned order of revisional to discharge the petitioner. Therefore, it would be appropriate for the Investigating Agency to see that additional relevance against the petitioner is disclosed in the record of the Sessions Case, whereas, irrespective of dismissal of application at Exh.9 by impugned judgment and dismissal of this revision, it would be open for the petitioner to apply afresh at any appropriate time for discharge if there is no evidence to prove his involvement in the offence. Though, it is not necessary to disclose or to advise any-one, it is made clear that discharge application can be filed at any state of the trial and, thereby, even at the time of making statement under Section 313 of Code of Criminal Procedure, the accused can apply for his discharge if there is no evidence against him.

16. In view of above facts and circumstances, there is no substance in Revision Application and hence the same is dismissed. Rule is discharged.