

(2002) 06 CAL CK 0011
In the Calcutta High Court
Case No : C.R.R. No. 1204 of 2001

Nirmal Kanti Banerjee and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 161
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2002) 3 CALLT 573 : (2002) 3 CHN 421 : (2003) 1 DMC 678

Hon'ble Judges : Debiprasad Sengupta, J

Bench : Single Bench

Advocate : Sekhar Basu, for the Appellant; Kazi Safiullah and Sk. A. Salam, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Sengupta, J.—Present revisional application is directed against an order dated 15.5.2001 passed by the learned Additional Sessions Judge, 2nd Court, Howrah in Sessions Trial No. XXII (7) of 2000 thereby rejecting the petitioners' application for discharge from the aforesaid case.

2. Present petitioners are made accused in the aforesaid session trial to meet a charge under Sections 498A/304B/34 of the Indian Penal Code. Petitioners filed an application before the learned trial Judge praying for discharge from the said case. The contention of the petitioners before the learned trial Judge was that one Dr. Tapan Sarkar, attending physician of SSKM Hospital in his statement recorded by Police u/s 161 Cr.PC stated that the victim made a dying statement before him that while she (the victim) was preparing tea she caught fire and her husband tried to rescue her. But after the postmortem was held, the P.M. doctor was of the opinion that the deceased might have been assaulted before burn injury and death, in his opinion, was due to shock of burn effect associated with assault which was ante-mortem in nature. Thereafter an opinion was sought for from Dr. Apurba Nandy, Professor and Head of the Department of Forensic and

State Medical College. The injuries were described by Dr. Nandy as Mechanical injuries and he further opined that the autopsy surgeon Dr. D.K. Basu might have confused some local patchy reaction of burn injuries as bruises.

3. The said application for discharge filed by the petitioners was rejected by the learned trial Judge by his order dated 19.2.2001. Challenging such order a revisional application was preferred by the petitioners before this Court being C.R.R. No. 479 of 2001, which was finally disposed of by this Court on 2.3.2001. As the date for framing of charge was fixed on 5.3.2001 before the learned trial Judge, the revisional application was disposed of directing the learned trial Judge to take all these facts into consideration at the time of framing of charge. Liberty was also granted to the petitioners to agitate all such points before the learned trial Judge at the time of framing of charge.

4. After the aforesaid order was passed by this Court, the matter was again taken up by the learned trial Judge afresh. The learned trial Judge after hearing the respective parties again rejected the prayer for discharge made by the petitioners by his order dated 15.5.2002 and fixed dated for framing of charge. Challenging such order the petitioners have again preferred this revisional application.

5. It is the contention of the petitioner's learned advocate that the earlier direction at this Court has not been complied with by the learned trial Judge, who mechanically rejected the prayer for discharge made by the petitioners without considering the materials on record.

6. Relying upon a number of decisions of the Hon''ble Apex Court it is submitted by the petitioners'' learned advocate that at the stage of framing of charge a duty is cast upon the Court to apply his judicial mind for ascertaining whether there are sufficient grounds for presuming the commission of the offence by the accused. Mr. Bose, learned advocate of the petitioner relies upon a judgment of the Hon''ble Supreme Court reported in Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, . In the said judgment it was held by the Hon''ble Apex Court as follows:--

"The argument that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution."

7. Next judgment relied upon by Mr. Bose is reported in 2000 SCC 1110 (State of Madhya Pradesh v. Mohonlal Soni), wherein it was held by the Hon"ble Supreme Court as follows:--

"The crystallised 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."

8. In the case reported in Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, which is relied upon by Mr. Bose, it was held by the Hon"ble Supreme Court as follows:--

"From the above discussion, it seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom 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 even if it is opposed to common sense or the broad probabilities of the case."

9. In the next judgment relied upon by Mr. Bose, reported in 1996 SCC 1104 (Satish Mehra v. Delhi Administration and Anr.), it was held by the Hon"ble Supreme Court as follows:--

"The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code."

"But when the Judge is fairly certain that there is no prospect of the case ending in conviction the 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 workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself."

10. Relying upon the aforesaid judgments it is submitted by Mr. Bose, learned advocate that the impugned order was passed by the learned trial Judge without applying his judicial mind and without considering the materials placed before

him. It is further submitted by Mr. Bose that in passing the impugned order the learned trial Judge did not at all comply with the earlier direction of this Court.

11. Mr. Safiullah learned Public Prosecutor in opposing the present application submits that the learned trial Judge passed the order in full compliance with the earlier direction of this Court and on proper application of judicial mind. It is further submitted by the learned Public Prosecutor that the learned trial Judge is not required to record any reason when he decides to frame a charge against the accused. Learned Public Prosecutor in support of his contention relies on a judgment of the Hon"ble Supreme Court reported in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, In paragraph 7 of the said judgment it was held by the Hon"ble Supreme Court as follows:--

"Section 227 of the Code provides that if upon consideration of record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for which he is required to record his reasons for so doing. No reasons are required to be recorded when the charges are framed against the accused persons. This Court in Kanti Bhadra Shah and Another Vs. The State of West Bengal, held that there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge."

12. Next judgment relied upon by the learned Public Prosecutor is reported in Kanti Bhadra Shah and Another Vs. The State of West Bengal, . This judgment has been referred to by the Hon"ble Supreme Court while deciding the case of Smt. Om Wati and Anr. referred to above. In this judgment it was held by the Hon"ble Apex Court that if the trial Court decides to frame a charge, there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so.

13. In the next judgment relied upon by learned Public Prosecutor, reported in State of M.P. Vs. S.B. Johari and Others, it was held by the Hon"ble Supreme Court as follows:--

"In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. 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."

14. I have heard the learned advocates of the respective parties. I have perused the judgments referred to above. There is no doubt that there is a contradiction in between the dying statement of the victim before the attending doctor and the opinion of the postmortem doctor, who opined that the victim might be assaulted before burn injury and the death was due to shock of burn effect associated with assault which was antemortem in nature. In such a situation so many things are to be taken into consideration by the trial Court. The mental fitness and physical capacity to make a statement at the time of making the dying declaration is the primary consideration in admission of a dying declaration. This may be ascertained from the nature of injury and general condition of the patient besides opinion of the doctor. In the present case the victim sustained 100% burn injury and in such a condition whether she was in a position to make any statement before any doctor, can only be decided by the trial Court after considering all the surrounding circumstances. These things can only be decided by the trial Court after recording evidence. The opinion of Dr. Apurba Nandy is nothing but an opinion obtained by the investigating agency. At the stage of consideration of charge an accused, against whom there are other materials on record, cannot be discharged simply relying upon an opinion given by Dr. Apurba Nandy.

15. I have gone through the statements recorded by the police u/s 161 Cr.PC, the post mortem report as also the opinion of Dr. Nandy and in my considered view prima facie materials are there which are sufficient for the purpose of proceeding further in this matter. All the materials were place before the learned trial Judge, who after considering all such materials passed the impugned order. In my view the said order was passed in full compliance with the earlier direction of this Court and I do not find any reason to interfere with the same.

The present revisional application accordingly fails and the same is dismissed.

The interim order earlier granted by this Court stands vacated. The learned trial Judge is directed to proceed with the trial and to conclude the same with utmost expedition.

C.R.A.N. No. 914 of 2001

In view of the judgment delivered Dy this Court today in C.R.R. No. 1204 of 2001, the application for vacating the interim stay filed by the State of West Bengal being C.R.A.N. No. 914 of 2001 is also disposed of. The interim stay earlier granted by this Court stands vacated.