
(2015) 07 AHC CK 0175
In the Allahabad High Court
Case No : Criminal Revision No. 2320 of 2015

Rahul Chauhan and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 227
Penal Code, 1860 (IPC) — Section 307, 323, 34, 506

Citation : (2015) 3 ACR 3381 : (2015) 90 ALLCC 757

Hon'ble Judges : Vijay Lakshmi, J

Bench : Single Bench

Advocate : Vinay Kumar Mishra, for the Appellant

Judgement

Vijay Lakshmi, J—The instant Criminal Revision has been preferred against the order dated 15.6.2015 passed by the Sessions Judge, Baghpat, in S.T. No. 4 of 2015, State v. Rahul Chauhan and others, under sections 323, 307, 506 I.P.C. P.S. Baghpat, District Baghpat, whereby the learned Sessions Judge, Baghpat, has dismissed two application Nos. 16-B and 17-B moved by the revisionists. Heard learned counsel for the revisionists and learned AGA for the State of U.P. and perused the record.

2. The impugned order shows that an application 16-B was filed by the revisionists/accused persons in the aforesaid Sessions Trial with the prayer to provide them copies of some documents stating therein that the documents provided earlier to the accused persons were illegible. The learned Sessions Judge by observing that the application 16B has been filed only with a view to prolong the proceedings at a very belated stage, rejected it.

3. The accused Akash and Pankaj moved another application 17B praying that the charge framed against them under sections 323 and 307 be quashed as the charges under sections 323 and 307 I.P.C. cannot be framed simultaneously for the same occurrence. The Court below after considering the prima-facie evidence available on record including the case diary and after recording a clear finding

that the witnesses including the injured witnesses have categorically stated that the accused persons had assaulted them with intention to kill and the medical evidence reveals that a depressed fracture was found in the temporal bone of the injured Navin, rejected the application 17-B of the revisionists.

4. A perusal of the medical report-available on record clearly shows that the injured Navin had sustained grievous injury on head, which is the most vital part of the body, and in the opinion of the doctor this injury was dangerous to life.

5. Besides the aforesaid injured Navin, another injured Nishant is also stated to have sustained injury, hence there appears no force in the submission of learned counsel that charges under sections 323 and 307 I.P.C. cannot be framed together for one occurrence.

6. Learned Sessions Judge, Baghpat, has framed charge No. 1 under section 307 read with section 34 I.P.C. against the revisionists for the head injury allegedly caused by them on the injured Navin and charge under section 323 read with section 34 I.P.C. is framed against them for inflicting simple injuries on both the injured Navin and Nishant.

7. The Sessions Judge has the power to discharge the accused in the following circumstances;

- A. where the evidence produced is not sufficient,
- B. where there is no legal ground for proceeding against the accused,
- C. where the prosecution is clearly barred by limitation, or
- D. where he is precluded from proceeding because of a prior judgment of High Court.

8. The impugned order shows that the Court below has elaborately discussed in it the prima facie evidence available on record. At the stage of framing a charge only a reasonable doubt in the mind of the Court concerned is sufficient and the Courts are not required to see whether the evidence available on record is sufficient to prove the case of prosecution beyond reasonable doubt. Only prima facie evidence as available on record is to be considered by the Court concerned at the initial stage of framing charges.

9. In State of Orissa Vs. Debendra Nath Padhi, AIR 2005 SC 359 : (2005) 99 CLT 348 : (2005) 1 CTC 134 : (2004) 10 JT 303 : (2004) 10 SCALE 50 : (2005) 1 SCC 568 : (2004) AIRSCW 6813 : (2004) 8 Supreme 568 , the Hon"ble Apex Court has held that at the time of framing charge, what the Trial Court is required to see and consider, are only the Police Papers referred to under section 173, Cr.P.C. and documents sent with it. The accused cannot be permitted to produce documents to put forth his defence case for purpose of seeking discharge.

10. In Soma Chakravarty Vs. State through CBI, AIR 2007 SC 2149 : (2007)

CriLJ 3257 : (2007) 7 JT 181 : (2007) 7 SCALE 25 : (2007) 5 SCC 403 : (2007) 6 SCR 324 : (2007) 2 UJ 696 : (2007) AIRSCW 3683 : (2007) 4 Supreme 280 , it has been held by the Hon''ble Apex Court that at the time of framing of 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. If on the basis of material on record the Court could form an opinion that the accused might have committed the 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. Whether, in fact, the accused committed the offence, can only be decided in the trial.

11. In Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others, AIR 2009 SC 9 : (2009) CriLJ 338 : (2008) 11 JT 460 : (2008) 13 SCALE 133 : (2008) 10 SCC 681 , it has been held by the Hon''ble Apex Court that even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the Court to frame a charge.

12. In Omwati v. State 2001 (42) ACC 840 (SC), the Hon''ble Apex Court has restricted the High Court from interfering by holding that the High Court should not interfere at initial stage of framing the charges merely on hypothesis, imagination and farfetched reasons, which in law amount to interdicting the trial against the accused persons.

13. Hon''ble Apex Court in Om Prakash Sharma v. C.B.I. 2000 (41) ACC 266 (SC), has held that at the stage of 227 of the Code of Criminal Procedure, it is not open to the Sessions Judge to weigh the pros and cons whether improbability and then proceed to discharge the accused holding the said statements existing in the case diary as unreliable.

14. In Kanti Bhadra Shah and Another Vs. The State of West Bengal, AIR 2000 SC 522 : (2000) CriLJ 746 : (2000) 1 JT 13 : (2000) 1 SCALE 19 : (2000) 1 SCC 722 : (2000) 1 SCR 27 : (2000) AIRSCW 52 : (2000) 1 Supreme 6 , Hon''ble Supreme Court has held that the discharge order must contain reasons but an order of framing charge cannot be quashed merely because it does not contain reasons.

15. In State of J & K v. Sudarshan Khakkar 1997 (35) ACC 414 (SC) , and in Rukmini Narvekar Vs. Vijaya Satardekar and Others, AIR 2009 SC 1013 : (2009) CLT 104 : (2009) CriLJ 822 : (2008) 11 JT 32 : (2008) 13 SCALE 523 : (2008) 14 SCC 1 : (2009) AIRSCW 118 , it has been held that no weight is to be attached to the probable defence of the accused and at the time of framing of the charge, the Court has to confine its attention to documents referred to under section 173 Cr.P.C. only.

In wake of the aforesaid legal position and considering the facts and circumstances of the present case and the prima facie evidence available on record against the revisionists, discussed in detail by the Court below, there appears no illegality or irregularity in the order impugned calling for any

interference by this Court. The revision appears to have no force and it is liable to be dismissed.

The revision is accordingly dismissed.