

(2016) 05 AHC CK 0233
In the Allahabad High Court
Case No : Criminal Revision No. 1217 of 2016

Raj Kumar Agrawal Alias Raju Garg

APPELLANT

Vs

State of U.P. and Anr.

RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228

Citation : (2016) 96 ACrC 403 : (2016) 6 ADJ 9

Hon'ble Judges : Mrs. Ranjana Pandya, J.

Bench : Single Bench

Advocate : Ashok Pal Singh, Advocate, for the Appellant; G.A., N.I. Jafri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Ranjana Pandya, J.—This revision has been preferred against the order dated 05.04.2016 passed by the learned Additional Sessions Judge, Court No. 16, Kanpur Nagar in ST No. 634 of 2014 (State v. Raj Kumar and others) whereby the discharge application moved by the revisionist Raj Kumar bearing No. 21 Kha was dismissed.

2. The brief facts of the case are that an FIR was lodged at Crime No. 211 of 2014 under Section 302 IPC and 7th Criminal Law Amendment Act and 3/25 Arms Act, Police Station Govind Nagar, District Kanpur Nagar against the revisionist and others. Investigation commenced and ended into a charge sheet.

3. The learned counsel for revisionist has submitted that only false allegations of hatching conspiracy have been levelled against the revisionist and there is no evidence against him to charge with criminal conspiracy. Independent witnesses have not stated about involvement of the revisionist in the present case. There is no chain of evidence to disclose the offence of Section 120-B IPC against the revisionist. It is further submitted that initially, the revisionist and Santosh Kuril were named and role of firing upon Prasang Gupta alias Guddu, brother of

opposite party No. 2 (informant) was assigned to the revisionist along with two unknown accused persons. But during the investigation, names of Sanjay Tiwari, Amit Jaiswal and Abhinab Jaiswal came into light for firing upon the deceased. It is also contended that after submission of the charge sheet, the revisionist moved the aforesaid discharge application which was rejected by the learned Court below without applying its judicial mind.

4. I have heard Shri Ashok Pal Singh, learned counsel for revisionist, Shri N.I. Jafri, learned counsel for informant and learned AGA for State.

5. Learned AGA as well as Shri N.I. Jafri, learned counsel appearing for opposite party No. 2, have submitted that defence of accused cannot be looked into while deciding the discharge application. They have also supported the impugned order and stated that the same is well reasoned order and there is no ground to allow the revision.

6. Section 227 Cr.P.C. reads as follows:-

227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

7. Thus, if the judge opines that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Thus, in case of discharge of an accused it is mandatory for the Court to record its reasons.

8. Section 228 Cr.P.C. reads as follows:-

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

9. Thus, if the judge finds sufficient ground to frame charge, he shall do so.

10. In 2014 (84) ACC 656: State of Tamil Nadu v. N. Suresh Rajan (SC) the Apex Court has held as under :

"We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. v. State of., AIR 2013 SC 52, in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

11. No doubt, it is a broad proposition that the interference of revisional Court may be justified in the following cases:-

where the decision is grossly erroneous, or

where there is no compliance with the provision of law, or

where the finding of fact affecting the decision is not based on evidence on

record, or

where the material evidence of parties has not been considered, or

where the court below has misread or mis-appreciated the evidence on record, or

where the judicial discretion has been exercised arbitrarily or perversely.

12. In *P. Vijayan v. State of Kerala*, 2010 Cr. LR 177, the Apex Court has laid down that scope and ambit of section 227 was again considered in *Niranjan Singh K.S. Punjabi v. Jitendra Bhimraj Bijjaya*, 1990 (4) SCC 76, it has been held that:

"(13). The scope and ambit of Section 227 was again considered in *Niranjan Singh K.S. Punjabi v. Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76, in para 6, this Court held that:

"Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the *State of Bihar v. Ramesh Singh* this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. 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 the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In *Union of India v. Prafulla Kumar Samal* this Court after considering the scope of Section 227 observed that the words "no sufficient ground for proceeding against the accused" clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence.

(14). In a recent decision, in the case of *Soma Chakravarty v. State through CBI*,

(2007) 5 SCC 403, this Court has held that the settled legal position 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. 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. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge."

13. Thus, at the time of framing of charge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

14. In (2005) 1 SCC 568, *State of Orissa v. Debendra Nath Padhi* the Apex Court has held as under:-

"What is to the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. 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."

15. The learned counsel for the complainant and learned AGA have placed reliance upon AIR 1996 SC 1774: *State of Maharashtra v. Som Nath Thapa* in which the Apex Court has observed as under:-

"If there is ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence. In Black's Law Dictionary word

"presume" has been defined to mean "to believe or accept upon probable evidence". Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain or proved by direct testimony) as to the truth of a fact alleged." The aforesaid shows 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."

16. In a case where chain of events is complete or not or where conspiracy is hatched or not would be a matter of evidence. The defence of accused, if any, cannot be looked into by the Court at the time of framing of charge. The learned trial Court has rightly held that at the time of framing of charge, the Court has only to look into the papers submitted by the Investigating Officer along with his report.

17. Thus, there is no illegality, irregularity or impropriety in the impugned order in as much as the same has been passed on the premise that defence version cannot be looked into by the Court at the time of framing of charge.

18. The revision lacks merit and is hereby dismissed at the admission stage.