
(2015) 07 AHC CK 0089
In the Allahabad High Court
Case No : Criminal Revision No. 436 of 2015

S.K. Badola and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 209, 227, 228, 319
Prevention of Corruption Act, 1988 — Section 12, 13(1)(C)(d), 13(2)

Citation : (2015) 07 AHC CK 0089

Hon'ble Judges : Aditya Nath Mittal, J

Bench : Single Bench

Advocate : Srish Chandra Aghinotri, for the Appellant

Judgement

Aditya Nath Mittal, J—Heard learned counsel for the revisionists, learned AGA and perused the record.

2. This criminal revision has been filed against the order dated 19.05.2015 passed by the learned Special Judge (P.C. Act), Lucknow in Criminal Case No. 36 of 2007 under section 13(1)(C)(d) read with 13(2) and 12 of the Prevention of Corruption Act, 1988 by which the application for discharge has been rejected.

3. Learned counsel for the revisionists has submitted that there is no direct evidence regarding the involvement of the revisionists and the case cannot proceed on the circumstantial evidence. It has also been submitted that as per the statement of the Deputy Director, the testing report is wrong and there was possibility of only 30% deficiency in the construction material.

4. Learned AGA has submitted that the learned court below has considered all the aspects of the matter and has come to the conclusion that the revisionists were Assistant Engineers and it was their duty to inform their higher authorities regarding the sub-standard materials. It has also been submitted that there is sufficient evidence to show that the material used in the construction of the houses was sub-standard.

5. Section 227 of the Code of Criminal Procedure provides that 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 no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

6. For the purpose of determining whether there is a sufficient ground for proceeding against the accused, the Court possesses a comparatively wider discretion in exercise of which it can determine the question whether the material on record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible. At this stage only prima facie case is to be seen, whether case is beyond reasonable doubt is not to be seen. At this stage of framing charge, probative value of materials on record cannot be gone into. At the time of framing of the charge, it is not necessary for the prosecution to establish beyond all reasonable doubts that the accusation which they are bringing against the accused person is bound to be brought home against him.

7. In *Rajbir Singh Vs. State of U.P. and Another*, AIR 2006 SC 1963 : (2006) 101 CLT 788 : (2006) CriLJ 2458 : (2006) 3 JT 372 : (2006) 3 SCALE 125 : (2006) 4 SCC 51 : (2006) AIRSCW 2311 : (2006) 2 Supreme 538, it has been held that at the stage of framing charge the Court has to see if there is sufficient ground for presuming that the accused has committed an offence. If the answer is in affirmative, the order of discharge cannot be passed and the accused has to face the trial.

8. In *Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra*, AIR 2008 SC 2991 : (2008) CriLJ 3872 : (2008) 6 JT 299 : (2008) 6 SCALE 469 : (2008) 10 SCC 394 : (2008) AIRSCW 5043, Hon'ble the Apex Court, interpreting the words "not sufficient ground for proceeding against the accused" has held that it postulates exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution.

9. Hon'ble Apex Court in *Om Parkash Sharma Vs. Central Bureau of Investigation, Delhi*, AIR 2000 SC 2335 : (2000) CriLJ 3478 : (2000) 3 CTC 55 : (2000) 6 JT 554 : (2000) 4 SCALE 264 : (2000) 5 SCC 679 : (2000) AIRSCW 2420 : (2000) AIRSCW 3802 : (2000) 7 Supreme 389 : (2000) 3 Supreme 745, 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.

10. Hon'ble Apex Court in *Niranjan Singh Karan Singh Panjabi vs. Jitendra Bhimraj Bizza* AIR 1990 SC 1962 has held that the Court may for 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.

11. 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.

12. In *State of Jammu and Kashmir Vs. Sudershan Chakkar and another*, AIR 1995 SC 1954 : (1995) CriLJ 3606 : (1995) 3 SCALE 407 : (1995) 4 SCC 181 : (1995) 1 SCR 294 Supp : (1995) 2 UJ 292 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.

13. At the stage of framing of charge, the court concerned is not required to go into the details of the prosecution evidence from the point of view whether conviction is sustainable on the basis of the available evidence or not. At this stage, court has to be satisfied only on the point whether there exist sufficient ground for proceedings against the accused or not. This legal aspect has been considered by the Hon"ble Apex Court in the case of *State of Madhya Pradesh Vs. Mohanlal Soni*, AIR 2000 SC 2583 : (2000) CriLJ 3504 : (2000) 8 JT 333 : (2000) 5 SCALE 197 : (2000) 6 SCC 338 : (2000) 2 UJ 1182 : (2000) AIRSCW 2674 : (2000) 5 Supreme 139 in which the Apex Court in paragraph No. 7 has held as under:-

"7. 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."

14. In the case of *Dilawar Balu Kurane Vs. State of Maharashtra*, AIR 2002 SC 564 : (2002) CriLJ 980 : (2002) 1 Crimes 243 : (2002) 1 JT 6 : (2002) 1 SCALE 47 : (2002) 2 SCC 135 : (2002) 1 SCR 75 : (2002) 1 UJ 269 : (2002) AIRSCW 146 : (2002) 1 Supreme 55 wherein Hon"ble Apex Court in paragraph 12 has held as under:-

"12. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceedings with the trial; by an large if two views are equally

possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a pot office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

15. Hon"ble the Apex Court again in the case of Central Bureau of Investigation Vs. Mukesh Pravinchandra Shroff and others reported in [(2009) 16 SCC 429] considered the legal position on this point. In that case Special Court virtually passed an order of acquittal in the garb of an order of discharge. It was held by the Apex Court that it is well settled that the the stage of framing of the charge, what is required to be seen is as to whether there are sufficient grounds to proceed against the accused and the approach of the Special Court was held to be incorrect by the Apex Court.

16. Hon"ble the Apex Court in the case of Sajjan Kumar Vs. Central Bureau of Investigation, (2010) 10 JT 413 : (2010) 10 SCALE 22 : (2010) 9 SCC 368 again considered this aspect and has held in paragraph No. 19 as under:-

"19. It is clear that at the initial stage, if there is a strong suspicion 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. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution purposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in 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."

17. In a recent judgment, Hon"ble the Apex Court has again considered this aspect in the case of Amit Kapoor Vs. Ramesh Chander and Another, (2012) 4 JCC 2885 : (2012) 9 JT 329 : (2012) 9 JT 312 : (2012) 9 SCALE 58 : (2012) 9 SCC 460 reported in and has discussed in paragraph No. 17, the legal position on this point, as under:-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section

exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a *since qua non* for exercise of such jurisdiction. It may even be weaker than a *prima facie* case. There is a fine distinction between the language of Sections 227 and 228 of the Code."

18. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19. Again in the case of Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, (2012) CriLJ 4610 : (2012) 6 CTC 569 : (2012) 9 JT 359 : (2012) 9 SCALE 228 : (2012) 9 SCC 512 Hon"ble the Apex Court in paragraph No. 15 has held as under:-

"15. From the above decisions, it is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the court to say that there is no sufficient ground for proceeding against the accused. A Judicial Magistrate enquiring into a case under Section 209 of the Code is not to act as a mere post offence and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no *prima facie* evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under Section 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analysing the role of the respondent herein (A-6) from the charge-sheet and the materials supplied alongwith it, the above principles have to be kept in mind."

20. In a very recent judgment in the case of Sherish Hardenia and Others Vs. State of M.P. and Another, (2014) 1 AD 456 : (2014) 1 CCR 92 : (2014) 1 DMC 254 : (2014) 2 JCC 1354 : (2014) 1 JCC 369 : (2014) 1 JT 336 : (2014) 1 JT 286 : (2014) 1 RCR(Criminal) 342 : (2013) 15 SCALE 260 : (2014) 3 SCJ 637 , Hon"ble Apex Court has held in para 3 as under:

"Whether it is quashing of an FIR or a charge-sheet, or summoning of a party under Section 319 Cr.P.C., this Court has repeatedly opined that approach of the

Judge must be to consider whether the collected material and evidence is indicative of existence of merely a prima facie case."

21. Aforesaid pronouncements makes it abundantly clear that at the stage of framing charge court is supposed to apply its mind, on the basis of material available on record, whether there exist sufficient ground for proceeding the accused or not. If the Court finds sufficient grounds for proceeding that it would be justified to proceed to frame charge. Such a decision has to be arrived at on the basis of material available on record. At this stage the defence of the accused has not to be considered. The ground that accused has been falsely implicated due to enmity or malafide are alien to be considered at this stage. Such ground can be considered only at the relevant stage of the trial.

22. It is also settled position of law that at the time of framing charge the accused has no right to produce any material because the expression "record of the case" in Section 227 Cr.P.C. refers to the material produced by the prosecution and not by the accused.

23. 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 High Court.

24. Keeping in view the aforesaid pronouncement of Hon''ble Apex Court it is clear that for framing the charge it is not desirable for the Court whether the conviction by the Court is permissible on the basis of evidence available against it. Even if at this stage Court is satisfied there exist suspicion against the accused that he is involved in the commission of offence then the trial court would be justified in framing the charge against the accused. At the stage of framing of charge, the court is not expected to scrutinize the entire prosecution evidence from the point of view whether conviction of the accused is possible on the basis of material available against him.

25. At the stage of framing of charge, prima-facie evidence has to be seen. It is not disputed that the revisionists were working at Kanpur Development Authority during the period when the said houses were constructed.

26. It is relevant to mention that the learned court below while rejecting the application for discharge has specifically stated that it has further clarified that observations made in rejecting these applications are on the basis of case diary, which shows that the learned court has considered the evidence on the case diary and there is sufficient evidence in the case diary to frame the charges for the said offences.

27. The learned court below has considered all the aspects of the matter in detail and I do not find any error of law or perversity in the impugned order.

28. The revision is dismissed.