

(1992) 03 OHC CK 0032

In the Orissa High Court

Case No : Criminal Revision No. 375 of 1988

State Bank of India, Balangir Branch

APPELLANT

Vs

Satyanarayan Sarangi and Another

RESPONDENT

Date of Decision : 03-03-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 228(1), 239, 240
Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (1992) CriLJ 2635

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : M.N. Das and M.M. Das, for the Appellant; H.S. Misra and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—The order of the learned Additional Sessions Judge, Balangir discharging opposite party No. 1 u/s 239 of the Code of Criminal Procedure, 1973 (in short "the Code") by setting aside the order of the learned Sub-Divisional Judicial Magistrate, Balangir (in short "the SDJM") is assailed in this revision application by the informant.

2. The accusations which set the law into motion are as follows :

Opposite Party No. 1 Satyanarayan Sarangi (hereinafter referred to as "the accused") was working as a clerk of the State Bank of India, Balangir Branch (hereinafter referred to as "the informant"). The Branch Manager of the informant-bank lodged a report in the Balangir town Police Station to the effect that on Lokanath Nepak had opened a savings bank account in the bank, and he complained about irregularities in his account. The account holder had not withdrawn Rs. 7,500/- from his account, but it was so reflected in the pass book, on receipt of information, a case under Sections 420/467/468 of the Indian Penal Code, 1960 (in short "IPC") was registered and after investigation charge-sheet was submitted against the accused-opposite party No. 1. The materials on which

reliance was placed to implicate the accused were that the Handwriting Expert found certain words and numbers which were in his handwriting. He was working in the withdrawal counter on the date on which the withdrawal has been shown to have been made. From the statement of one Mrs. Smita Patnaik it appeared that accused entrusted her with the withdrawal voucher to make necessary entries in the accounts registers.

3. By order dated 16-12-1986, the learned SDJM, Balangir framed charge against the opp. party No. 1 under Sections 420/467/468, I.P.C. The said order was assailed in revision before the learned Sessions Judge, Balangir. Before the revisional Court it was primarily contended that there was absolutely no material on record to connect the opp. party No. 1 with the alleged crime. The materials on record do not justify framing of charge, as even if the materials stand un rebutted, it would not result in his conviction. Though the Handwriting Expert has opined that some portions in the withdrawal voucher were in the handwriting of the opp. party No. 1, the specimen signatures of the opp. party No. 1 did not tally with the handwriting in question as appearing in the withdrawal slip. The learned Addl. Sessions Judge, Balangir, who heard the revision application was of the view that there was no material in the instant case to show that the accused was the author of the withdrawal voucher and therefore, did not sustain the charge. It was also observed that the opinion of the Handwriting Expert was not obtained after comparison of the admitted and specimen signatures of Shri Lokanath Nepak, the account holder with the handwritings appearing in the withdrawal voucher, and therefore, there was no material to show that actually the signature of Shri Nepak was forged in the withdrawal voucher. The very foundation of the allegation was set at naught by such non-comparison.

4. Mr. M.N. Das, learned counsel appearing for the petitioner, submits that the approach of the learned Additional Sessions Judge was erroneous. It was not open to him to make a threadbare analysis of the evidence and arrive at the conclusion as done. At the stage of framing charge, a very strong suspicion founded upon material which leads to form a presumptive opinion constituting the alleged offence would be sufficient. The learned counsel for opposite party No. 1, however, submits that even if the entire prosecution version was un rebutted, the same would not lead to a conclusion of complicity of the opp. party No. 1 in the offence of any kind, much less for which he was charged by the learned SDJM.

5. Sections 228 and 240 of the Code deal with framing of charge. While Section 228 relates to framing of charge in respect of offences triable by Court of Session, Section 240 deals with framing of charge in respect of offences triable by Magistrate in warrant cases. The opening words of Sub-section (1) in both Sections 228 and 240 "that there is ground for presuming that the accused has committed an offence" make it clear that framing of charge is not a mere formality, but a judicial act, to be performed after applying judicial mind to the consideration whether there is any ground for presuming the commission of the

offence of the accused. The concerned Court cannot blindly accept opinion of the prosecution that the accused be asked to face a trial. Before forming opinion as to the presumption referred to in Section 228(1) or Section 240(1), the Judge or the Magistrate, as the case may be, is required to consider the records of the case, i.e., all the materials collected by the prosecution and also hear the submissions of the prosecution and the accused on the relevant aspects. Before framing a charge, he should be satisfied that there are materials on record on the basis of which it can reasonably be concluded that the accused is in any manner connected with the incident leading to the prosecution. (See *State of Karnataka Vs. L. Muniswamy and Others*, . In *State of Bihar Vs. Ramesh Singh*, it was observed by the apex Court that if the evidence which the prosecutor proposes to adduce to prove 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. For the purpose of determining whether there is sufficient ground for proceeding against an accused, the Court possesses comparatively wider discretion in the exercise of which it can determine the question whether the material on record, if unrebutted, is such on the basis of which it can reasonably be said that the accused had some link with the alleged offence. It has, however, to be remembered that at the stage of framing charge the prosecution has not yet commenced. The truth, veracity and effect of the evidence which the investigating Police Officer has gathered and which the prosecutor proposes to adduce are not to be meticulously judged. The standard of 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 Section 227 or 228 and Section 239 or 240 of the Code. At that 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 charge. (See *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, If on consideration of the materials it can be said that the accused has been reasonably connected with the offence, and on the basis of said materials there is a reasonable probability or chance of the accused being found guilty of the offence alleged, then framing of charge cannot be interdicted. There must be an intelligent participation by the Court and due care must be exercised by it while framing the charge or examining the accused persons as these are not matters of empty formality. A Presiding Officer of the Court is not to merely act as a disinterested auditor of the contest between the prosecution and the defence and should come to a clear understanding of the actual events that occurred and ensure that proper and necessary steps have been taken to arrive at the truth. (See *Maheswar Gouda and Others Vs. The State*,). 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. The purpose of a Sections 227 and 228 of the Code is to ensure that the Court should be satisfied

that the accusation made against the accused is not frivolous and that there is some material for proceeding against him. The evidence has yet to be taken and the aspects which accused terms vulnerable can very well be clarified by evidence when the prosecution has its opportunity of placing the case through witnesses in Court. It would be hazardous to act on the discrepancies unless they are so fatal and glaring as to affect the credibility of the prosecution case without affording reasonable opportunity to prosecution to substantiate the allegations. Similar view was expressed by the apex Court in *Eastern Spinning Mills and Virendra Kumar Sharda and Another Vs. Rajiv Poddar and Others*, and *State of Bihar Vs. Raj Narain Singh*, .

6. The case at hand is not one where it can be said that there is no material to link the accused with the alleged crime. The Handwriting Expert's report shows that some words and numbers are in the handwriting of the opp. party No. 1. The evidence of Smt. Smita Patnaik also shows that the opp. party No. 1 had handed over the withdrawal voucher to her to make necessary entries in the accounts registers. Sufficiency of these materials for bringing home the allegations against opp. party No. 1 is to be gone into at the trial. Lokanath Nepak had denied that the withdrawal form had been signed by him. Since comparison of his signature with the signature appearing in the withdrawal form cannot be ruled out at the trial, that aspect should not have weighed in the mind of the learned Additional Sessions Judge while dealing with the propriety of framing charge. As observed by the Supreme Court in *Raj Narain Singh's* case (supra), it is not impermissible for the prosecution to place materials in that regard at the time of trial. The revisional Court was not justified in setting aside the order framing charge.

7. In the aforesaid premises, the conclusions of the learned Addl. Sessions Judge are indefensible and he was not justified in setting aside the order framing charge. Any view expressed by me here, should not be treated to be expression of any final opinion about factual aspects. I have referred to them for the purpose of adjudication of the question whether the learned Addl. Sessions Judge was justified in setting aside the order framing charge.

The revision application is allowed. The lower Court records be sent back immediately.