

(2011) 08 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 62 of 2010

State of Himachal Pradesh

APPELLANT

Vs

Jalam Singh and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 226, 227, 228
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37
Penal Code, 1860 (IPC) — Section 147, 148, 149, 218, 304A
Police Act, 1861 — Section 20

Citation : (2011) 3 ShimLC 294

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—The State is aggrieved by the order passed by learned Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala, discharging all the accused of the offences under Sections 452, 147, 148, 149, 323, 325, 506, 218, 342 IPC and Section 20 of the Police Act. Before advertng to the facts of the case, I need observe that not only the order passed by the trial Court is cryptic but it also lack of narration of the facts as also the law applicable.

2. What has been able to make out from the order is that the respondents have been discharged on the ground that another case has been registered against two more accused under Sections 342 and 304-A I.P.C. for causing death of one Jasbir Singh. In the present case, powers u/s 227 Cr.P.C. have been exercised by the learned Judge on the ground that the second F.I.R. No. 173 of 1996 has been registered with respect to the same incident of the deceased, who died in police custody.

3. In these circumstances, the Court holds that it is incompatible with the charge against the respondents in the present case. The deceased was beaten on 10.7.1996 where after he was taken in police custody and died on 12.7.1996. In other words, after receiving a thrashing from these respondents, deceased Jasbir

Singh seems to have succumbed to his injuries on 12.7.1996. The very act of beating and trespassing into the house of the in-laws of deceased would itself constitute an offence. No doubt, the Court has power to discharge an accused if the material on record does not prima facie disclose any material on the record. The law is now well settled. In State of Bihar Vs. Ramesh Singh, the Supreme Court holds:

4. u/s 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf." The Judge has to pass thereafter an order either u/s 227 or Section 228 of the Code. If "the Judge consider that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there, is ground for presuming that the accused has committed an offence which- (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxta position, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter u/s 227 or Section 228 of the Code. At that stage the Court is not to "see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But 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 not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not, 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. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But, if, on the other hand, it is so at the initial stage of making an order u/s 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one u/s 228 and not u/s 227.

5. In *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*, Shelat, J. delivering the judgment on behalf of the majority for the Court referred at page 79 of the report to the earlier decisions of this Court in *Chandra Deo Singh Vs. Prokash Chandra Bose and Another*, where this Court was held to have laid down with reference to the similar provisions contained in Sections 202 and 203 of the Code of Criminal Procedure, 1898 "that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused." Illustratively, Shelat J, further added "Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case.

(41&42)

4. To the similar effect is the judgment of the Supreme Court in *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, the Court holds:

14. These two decisions do not lay down different principles. Prafulla Kumar case has only reiterated what has been stated in Ramesh Singh case. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record of generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.

(P 721).

5. In *Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others*, the Court holds:

7. 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. Taking note of the burden of the pending cases on the Courts, it was held: (SCC PP.725-26 paras 11-12)

Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context it is pertinent to point out that even in a trial before a Court of session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.

12. If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the Counsel would address arguments at all stages, the snail-paced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at this stage, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the Court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and psychotropic Substances Act, 1985.

8. At the stage of passing the order in terms of Section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the Court is satisfied that a prima facie case is made out against the accused, the

Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the Court can discharge the accused. The Court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. This Court in *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, cautioned the High Courts to be loathe in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are Courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed.

10. A three-Judge Bench of this Court in *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, reminded the Courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The Court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it, the Court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in *Ramesh Singh and Anil Kumar Bhunja's cases (supra)* this Court again in *Satish Mehra Vs. Delhi Administration and Another*, reiterated:

9. Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short "the Code") which reads thus:

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." Section 228 contemplates the stage after the case survives the stage envisaged in the former Section. When the Court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two Sections are put in juxtaposition with each other the test to be adopted

becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is "sufficient ground for proceeding.

(Pp.338, 339 and 340)

6. The order passed by the trial Court is quite cryptic and bereft of reasons and does not consider the entirety of the entire facts constituting the incident. That is not to say that the respondents herein are guilty of the offences as charged. What would be required to be ascertained is as to whether the beatings administered to the deceased on 10.7.1996 were the primary cause of the death or the prevention of medical aid by these two accused. The Court also does not apply its mind to the Act of trespass. This exercise could not have been undertaken, I do not find that the order can be sustained and it is accordingly quashed and set aside.

7. The case is sent back to the learned Sessions Judge, Kangra at Dharamshala for re-consideration afresh in accordance with law. The record be sent back to the trial Court forthwith. Parties are directed to appear before the trial Court on 2nd November, 2011. Petition is disposed of.