

**(2010) 10 J&K CK 0002**

**In the Jammu And Kashmir High Court**

**Case No :** Criminal Rev. No. 29 of 2008, Cr.MP No. 25 of 2008, 561-A Cr.P.C. No. 54 of 2009, CMP No. 52 of 2009 and B.A. No. 26 of 2010

Subash Singh and Others

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

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**Date of Decision :** 20-10-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 267, 268, 269

**Citation :** (2011) 1 JKJ 237

**Hon'ble Judges :** Jai Pal Singh, J

**Bench :** Single Bench

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**Judgement**

J.P. Singh, Judge

1. Feeling aggrieved by the Charge under Sections 302/109/147/148 and 149 RPC, framed against them, by the Additional Sessions Judge,

Kathua, vide his order of March 24, 2008, the petitioners have filed these Petitions seeking its setting aside and quashing. They seek their release

on bail pending trial.

2. Learned counsel for the petitioners submitted that the trial Court had committed an error of law apparent on the face of records, in framing

Charge against them, in a routine fashion, ignoring the provisions of the law governing the field, when the case projected by the prosecution, would

not indicate them to have committed the offence(s) for which they have been Charged. It was argued in the alternative, that even if a case for

framing Charge, may be said, to have been made out, all the petitioners could not be so Charged, and that too, for the offences they are

erroneously, prima facie, found to have committed. According to the learned counsel, the facts and circumstances of the case amply demonstrate

that there was no reasonable ground to believe that the petitioners had committed offences, punishment wherefor, was death or imprisonment for life, and the petitioners, who had faced unnecessary incarceration, for long time, were entitled to consideration for release on bail pending trial, if it were to continue as such.

3. Justifying the Charge, the learned State counsel submitted that the order passed by the trial Court, being interlocutory, the exercise of Revisional jurisdiction may not be warranted; and even otherwise, the issues projected by the petitioners that they were not liable to be Charged for the offences, found to have been made out against them by the trial Court, cannot be considered, while examining the prosecution case, in terms of the provisions of Sections 268 and 269 of the Code of Criminal Procedure, which do not permit meticulous examination of the merits of the prosecution case.

4. Submissions of learned counsel for the parties have been considered and records of the trial Court perused.

5. According to the prosecution, Rakesh Singh alias Rocky, Rajesh Singh alias Raju and Ranjeet Singh alias Billa had an old enmity, on dispute over watering of fields and had quarreled over it several times. Subash Singh, Vijay Singh and Iqram Singh alias Tinku had enmity with Surinder Singh

regarding installation of gate in the Lane. These disputes, however, were later compromised with the intervention of Chajju Singh, Sarpanch. A

Compromise Deed too came to be executed. The parties, do not, however, appear to have stuck to the compromise and it was pursuant to the

old enmity that on June 28, 2007 at about 9 p.m., Subash Singh and Iqram Singh, hit Surinder Singh on the head with a stick 5" in girth at village

Sanoora, with intention of causing injuries, whereas Vijay Singh, Rakesh Singh, Rajesh Singh and Ranjeet Singh, with common intention, caused

injuries with sticks, kicks and blows. Surinder Singh succumbed to the injuries in the Military Hospital, Satwari, Jammu, on July 02, 2007. The

Postmortem examination of the deceased indicates him to have received single external injury on the Scalp in the occipital region, with laceration of

superficial layer measuring 2.5 cms. The internal injuries noted in the Postmortem Report, are Bruising under scalp and subarachnoid haemorrhage

in occipital region multiple contusion in occipital region and cerebellum; brain

oedema. The cause of death, indicated in the Report, is ""due to head injury caused by blunt trauma head"".

6. To deal with the petitioners' learned counsel's submissions that the Charge was invalid, reference needs to be made to the observations made by the trial Court before coming to the conclusion that a Charge under Sections 302/109/147/148 and 149 RPC was made out against the petitioners. These read thus:-

Upon consideration of the arguments of the learned Public Prosecutor, the learned counsel for the accused and the written arguments besides the judgments cited and also the statements of the witnesses recorded by the police and other connected documents on the file, I am of the considered

opinion that there are reasonable grounds to presume that accused Subash Singh S/o Krishen Singh, Rajesh Singh S/o Jagdish Singh, Vijay Singh

S/o Krishen Singh, Ranjit Singh S/o Baldev Singh, Rakesh Singh S/o Jagdish Singh and Ikram Singh S/o Neter Singh caste Rajput residents of

Sonoora Tehsil Hiranagar have prima facie committed offences punishable under Sections 302/109/147/148 and 149 RPC. Offence punishable

under Section 302 RPC is exclusively triable by the court of sessions. Charges under Sections 302/109/147/148 and 149 RPC is framed against

accused Subash Singh, Rajesh Singh, Vijay Singh, Ranjit Singh, Rakesh Singh and Ikram Singh. The contents of the charges framed have been

read over and explained to the accused persons who have pleaded not guilty to the said charges and have claimed to be tried...

7. Chapter XIX of the Code of Criminal Procedure, Svt. 1989, deals with the Form of Charge(s), Particulars, as to time, place and person, the

manner of committing offence(s), and the Words taken in the sense of law under which offence(s) was/were punishable. The petitioners have been

charged for committing the offences of Rioting, Rioting armed with deadly weapons, abetment, besides Murder, in Prosecution of Common

Object. There is, however, no mention in the order of the trial Court, indicating the specific offence(s) found to have been prima facie committed,

by one or the other accused, jointly or individually. Not only this, rather than indicating the specific names of the offences sufficient for description,

only Sections of the law against which the offences were found to have been committed, have been mentioned in the order impugned in these

Petitions.

8. Mere mention of the Sections of the law in the Charge or the order framing Charge, would not, serve the purpose of law, as it was likely to

prejudice the accused in his trial, in that, he would be disabled to know the exact Charge he had to face. Such position in law is amply

demonstrated by various Sections appearing in Chapter XIX of the Code of Criminal Procedure. The trial Courts are, therefore, required to

remain alive to the provisions of Chapter XIX of the Code of Criminal Procedure, before framing Charge, particularly when offences are more

than one and distinct.

9. Although true it is, that no error, in stating either the offence or the particulars required to be stated in the Charge, and no omission to state the

offence, or those particulars, may be regarded at any stage of the case, material, unless the accused was infact misled by such error or omission,

which had occasioned failure of justice; yet such position in law may not provide justification for the Courts to omit framing Charge(s), the way law

requires these to be so framed. Looking to the nature of the Charge(s) in the present case, which are separate, it was obligatory for the trial Court

to have indicated in its order and the Charge sheet, the description of the offence(s), for which, one or the other accused, had to be tried.

10. To be fair to the Prosecution, lest it effects it adversely in the end, resulting in failure of its case, because of the omission to frame requisite

Charge against the accused, And to the accused lest he complains prejudice, for non-framing of explicit Charge, disabling him to know exactly the

Charge to be faced, it is considered necessary, in the interests of justice and fair trial, to remand the case to the learned trial Judge to consider

framing Charge(s), afresh, which he may find to have been made out, indicating specifically its(their) description, in accordance with law, following

the provisions of Chapter XIX of the Code of Criminal Procedure, in letter and spirit, for trial.

11. Before proceeding further, it, however, needs to be reiterated that the trial Court is not required to sift, weigh and appreciate the prosecution

evidence to consider the case put up by the prosecution against the accused for the purpose of framing Charge(s), because, all that is required to

be seen, at this stage, is as to whether or not, a case for proceeding against the

accused was made out, on the basis of the Final Police Report, the material placed on records, and to be produced during the trial of the case, And in case there was no material in support of the Charge, to

discharge the accused, spelling out reasons in support of its finding, and disclosing its mind, that the Charge was groundless.

12. On trial Court's finding sufficient ground for proceeding against the accused, it may, for the limited purpose of finding, as to what particular

offence(s) the accused was prima facie found to have committed, sift and weigh the evidence and material relied upon by the prosecution, for, it is

not expected to act merely as a Post Office to frame the Charge(s), indicated as such in the Final Police Report (Charge-sheet). The matter, at this

stage, needs to be examined in accordance with law, and on the basis of the material placed on records, taking the prosecution case, its evidence

and the material relied upon, on its face value.

13. In view of the above discussion and the order proposed to be made, there may not be any necessity of deciding as to whether or not, the

material indicates prima facie case against the petitioners, for their trial, as this exercise, in the first instance, needs to be undertaken by the Court in

seisin of the case.

14. Learned State counsel's plea that the order impugned, being interlocutory, was not revisable, is found untenable in the circumstances, in view of

the deficiencies noticed in the order of the trial Court, which are apparent on the face of records warranting exercise of jurisdiction u/s 561-A of

the Code of Criminal Procedure, lest the prosecution or the defence suffers for the fault of the Court.

15. The order passed by the trial Court dated 24.03.2008, which does not conform to the requirements of Chapter XIX of the Code of Criminal

Procedure is, therefore, set aside and quashed remanding the matter to the learned Sessions Judge, Samba to proceed with the case for

considering it in terms of Sections 267, 268 and 269 of the Code of Criminal Procedure.

16. The petitioners are facing trial for over a period of three years. In the facts and circumstances of the case and taking into consideration the fact

that the deceased had received only one injury, which, according to him, was caused by Subash Singh, as he is stated to have disclosed this to the

complainant and which so appears in the complainant's initial statement to the police, it is considered appropriate, and in the interests of justice, to

admit the petitioners, except petitioner Subash Singh, to interim bail of Rs. 25,000/- each to the satisfaction of the trial Court, pending

consideration of the prosecution case afresh, as indicated above.

17. Consideration of the petitioners for their release on bail or refusal thereof, pending trial, would, however, depend on the determination, which

the trial Court makes, while considering the prosecution case, in terms of the provisions of Sections 267, 268 and 269 of the Code of Criminal

Procedure, keeping in view the permissible considerations regarding grant or refusal of bail. The grant of interim bail to the petitioners by this Court

shall not be construed as expression of opinion, on the merits of the case, while considering the case in terms of Sections referred to herein above,

or to their entitlement or otherwise to bail, pending trial. The trial Court to expedite the proceedings.

18. Criminal Revision No. 29/2008, Petition u/s 561-A Cr.P.C. No. 54/2009 and Bail Application No. 26/2010 are disposed of, accordingly.