
(1991) 09 MP CK 0010
In the Madhya Pradesh High Court
Case No : Criminal Revision No. 92/85

Sumativijay Jain

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 19-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 120A, 120B, 212, 302, 307

Citation : (1992) CriLJ 97

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Advocate : P.K. Saxena, for the Appellant; G.S. Solanki, for the Respondent

Judgement

V.S. Kokje, J.—This is an application for revision challenging framing of charge u/s 120B and Section 212 of the IPC against applicant Sumativijay Jain. The applicant is being tried along with non-applicants Nos. 2 and 3 his co-accused, who have been charged u/s 302 of the Penal Code and Section 302/34, IPC respectively. The court has framed charges Under Section. 120B and Section 212 of the IPC against the applicant.

2. Shri P. K. Saxena, the learned counsel for the applicant submits that there is no material to raise even a suspicion against the applicant in the case, there is no legal evidence to connect the applicant with the crime, that the charge has been framed on the basis of hearsay evidence of the witnesses, which is inadmissible in evidence and no specific part has been alleged to have been played by the applicant and a vague charge has been framed against him.

3. Shri S. M. Bapat, learned Deputy Government Advocate appearing for the State submitted that there is sufficient material for framing of charge and the defence of the accused persons cannot be considered at this stage.

4. The scope of interference with the framing of charge has been laid down by the Supreme Court more than once by now. In Century Spinning and

Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, the Supreme Court has laid down that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless i.e. there is no ground for framing charges. The court at the stage of framing of charges has to apply judicial mind and consider whether or not there is a ground for presuming the commission of the offence by the accused. The entire material on record must be taken into consideration and charges should not be framed mechanically. In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, the Supreme Court has laid down that while considering quashing of prosecution at its initial stage, the consideration should be whether uncontroverted allegations on record prima facie establish the offence. The court should not allow its process to be utilised for oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing criminal prosecution to continue, the court may while taking into consideration the special features of the case also quash the proceeding even though it may be at a preliminary stage. In *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, it is observed that at the stage of framing the charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution stages as gospel truth even if it is opposed to common sense or the broad probabilities of the case. On the other hand in *Radhey Shyam Vs. Kunj Behari and Others*, it has been observed that the relevant consideration at the stage of framing of charges is only the sufficiency of grounds for proceeding against the accused and not whether the materials on record are sufficient and adequate for a conviction being rendered. In *Union of India (UOI) Vs. Prafulla Kumar Samal and Another*, it was observed that if the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial. It was also observed that each case would naturally depend upon its own facts and no rule of universal application can be laid down in the matter. It was further observed in this case that if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to some suspicion but not grave suspicion against the accused, he is fully within his right to discharge the accused.

5. In the light of the aforesaid case law, we have now to examine whether the charge against the applicant on both the courts is groundless. The prosecution case is that on . 18-6-1984 Sangramsingh, Kanhaiyalal and Maniya Mali were quarrelling. Complainant Mangalsingh rushed to the spot on hearing the noise and wanted to mediate. On this, accused Maniya inflicted a knife injury in his abdomen and ran away. The complainant ran behind him but fell down near a

Nali. On a report being made a case u/s 307, IPC was registered and taken under investigation. The complainant was sent to a hospital where he ultimately succumbed to his injury on 25-6-1984. The charge was then altered to Section 302, IPC and ultimately a charge-sheet against all the accused-persons u/s 302/34, 120B and 212 of the IPC was filed. In the first information Report lodged by the deceased-complainant, applicant Sumativijay has not been mentioned at all nor there is any allegation regarding conspiracy or harbouring of any offender by him. In the dying declaration of the complainant recorded on 18-6-1984 also there is nothing against the applicant Sumativijay even though accused Mukesh has been referred to as maternal nephew of Sumativijay. On 19-6-84 statements of Madhosingh, Mangalsingh, Masudkhan were recorded by the Police. Out of these, Madhosingh and Shantilal were named in the FIR as persons who were present on the spot. None of them have said anything against applicant Sumativijay. On 25-6-84 the complainant died and it appears that attention of the Investigating Agencies was attracted towards the applicant Sumativijay. On 26-6-84 Kanhaiyalal s/o Ramchandra made a statement to the police that at the time of the quarrel in which deceased Mangalsingh was injured, Mukesh Jain instigated Maniya Mali in the following words :--

^^bls pkdw ls ekj ns esjk ekek ofdy lc fuiV ysxk**

On the same day Jagdish s/o Jagannath made the same statement to the police, Lalsingh s/o Balwantsingh made a similar statement on the same day i.e. 26-6-84 to the police. On 28-6-84 Kanjaiyalal s/o Nandram made a statement to the police that his earlier statement made to the police was false and was given at the instance of applicant Sumativijay. In this statement he also stated that Mukesh and Maniya ran away and were hiding on the advice of the applicant Sumativijay. He also stated that there is enmity between Sangram-singh and Sumativijay because of a land dispute and Sumativijay desires to implicate Sangramsingh for this reason. On 28-6-84 itself one Parvatibai w/o Shankar has been examined by the police. She is the mother of Maniya alias Dashrath. She has deposed that a talk took place between Maniya and Sumativijay 20 days back, she did not directly hear them, when Sumativijay left, she asked Maniya as to what was the matter and Maniya told her that Sumativijay was requesting him to sleep at his place, on being asked by Parvatibai as to why such a request was being made, Maniya told her that there was a dispute between Sumativijay and Sangramsingh and Mukesh is alone therefore Maniya should sleep at the place of Sumativijay. Thereafter, for 4-5 days Maniya slept at the place of Sumativijay. Then she has expressed an opinion that because of the land dispute between Sumativijay and Sangramsingh, the entire plan has been prepared by Sumativijay, who has got this trouble created by paying Maniya some money and it was Sumativijay who has advised Maniya to abscond and has hidden him somewhere. Maniya would not have done so on his own, On 28-6-84 itself police have recorded statement of Kailashchandra s/o Kanhaiyalal. He has also stated that the statement given by him to the police on 19-6-84 was incorrect and was made at the instance of the applicant Sumativijay. After giving his version about

the incident. He has deposed that on 27-6-84 Sumativijay took him to Nahargarh and told him to give statement as per his directions. He has also stated that Sumativijay was misguiding him. He has given his opinion that Sumativijay is the main cause of the quarrel and he has hidden the accused persons. On 6-7-1984 Ramlal s/o Narayan was examined by the police. He has not deposed as to the facts of the case but has given his opinion that the conspiracy was hatched by Sumativijay. The only thing he has deposed on facts is that Sumativijay used to move about on motorcycle along with the Maniya and Mukesh. He has also given an opinion that Sumativijay has hidden Maniya and Mukesh and if he is arrested the accused-persons would also be arrested. On 11-7-84 one Nisar s/o Gulkhan has diposed to the police that he has overheard standing near the office of Sumativijay a conversation between Sumativijay, Mukesh and others wherein Sumativijay was giving instructions to Mukesh to take a lathi with him and to Maniya to take a knife with him. This witness has also stated that he has heard in the village that Sumativijay was instigating Maniya to finish Sangramsingh and Sumativijay would pay him all the expenses and Rs. 2000/- in advance. A statement of the police constable is also recorded on 22-9-1984 in which the only allegation against Sumativijay was that he was trying to know what the witness have deposed to the police. On 20-11-84 a statement u/s 164, Cr. P.C. of Kailash s/o Kanhaiyalal was recorded before the Judicial Magistrate, First Class, Nanayangarh. In this statement the witness has stated that his earlier statements to the police were false and were given at the instance of Sumativijay. The only other statement made against Sumativijay is that Sumativijay gave him Rs. 50/-and said go to Mandsaur and come after having a round. On the same day, i.e. 20-11-84 statement u/s 164, Cr. P.C. of Kanjaiyalal s/o Nandram was recorded. The only statement made by him as regards Sumitivijay was that Kanhaiyalal had told the police about the knife attack of Mukesh at the instance of Sumativijay, who had told him that if he gives such a statement, he will be saved. This is the entire record against Sumativijay in the case, on the basis of which the Additional Sessions Judge has framed a charge u/ s 120B and Section 212 of the IPC against him.

6. Section 120A, IPC defines criminal conspiracy as under:--

120-A. When two or more persons agree to do, or cause to be done :--

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation:-- It is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object.

7. From the evidence collected by the police, it is not clear as to with whom the applicant Sumativijay conspired and to do what. All the statements are vague and general and are actually opinions expressed by the witnesses. The learned Sessions Judge has lost sight of the fact that at least two persons are required for a conspiracy and it was his duty to spell out the other person with whom the applicant Sumativijay conspired. The witnesses suggest that he conspired with Mukesh and Maniya but the learned Judge has not framed any charge u/s 120B against Mukesh and Maniya. The material on record does not indicate any other person with whom Sumativijay could be said to have conspired. It is, therefore, a case where even if all the allegations made in the statements of the witnesses before the police are taken to be true, no offence even prima facie is established against the applicant Sumativijay. The charge u/s 120B, IPC against him is, therefore, groundless.

8. For an offence u/s 212, IPC for harbouring an offender, it has to be proved that an offender was harboured or concealed by a person with the knowledge or having reason to believe that such person was the offender and such harbouring or concealment has to be with the intention of screening him from legal punishment. The material on record does not even prima facie indicate that Sumativijay harboured or concealed Mukesh and Maniya. It was only the opinion expressed by the witnesses that Sumativijay had the motive to harbour or conceal the offenders and he might have done so. The evidence is not sufficient to frame charge u/s 212 of the IPC also against the applicant Sumativijay. As observed in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, (supra) the court has to evaluate the material on record at the time of framing of a charge with a view to finding out if the facts emerging therefrom taken on their face value disclose the existence of the ingredients constituting the alleged offence. The Sessions Judge has clearly failed to do so. The material collected by the police against the applicant Sumativijay taken on its face value does not disclose the existence of the ingredients constituting an offence u/s 120B and Section 212 of the IPC. Both the charges against the applicant are, therefore, groundless and deserve to be quashed.

9. For the aforesaid reasons, this application is allowed. The impugned order dated 18-4-1985 passed by the First Additional Sessions Judge, Mandsaur in Sessions Trial No. 2/85 is set aside and the charges under Sections 120B and 212 of the Penal Code framed against the applicant Sumativijay are quashed. The trial may now proceed against the other accused-persons. The record of the trial court be sent immediately.