

(1997) 02 PAT CK 0018

In the Patna High Court

Case No : Criminal Miscellaneous Case No. 22050 of 1996

Sunil Kumar Jha @ Bittu Jha and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-02-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 227, 228, 228(1), 482
Penal Code, 1860 (IPC) — Section 201, 304(B), 306, 34, 498(A)

Citation : (1997) 1 PLJR 466

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Vishwanath Prasad Sinha, Nand Kishore Singh and D.K. Singh, for the Appellant; R.B. Roy "Raman", for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this application filed u/s 482 of the Code of Criminal Procedure the Petitioners have prayed for quashing the order dated 3.9.1996 passed by 3rd Additional-Sessions Judge, Madhubani in Sessions Trial No. 43 of 1996 whereby learned Sessions Judge ordered for framing of charges against the Petitioners for the offence u/s 304(B) and 201 of the Indian Penal Code.

2. The prosecution case, in brief, is that Sri Gopi Raman Jha lodged his fardbeyan before the Sub-Inspector of Harlakhi Police Station on 1.12.1994 alleging, inter alia, that his daughter Ganga Kumari was married with Sunil Kumar Jha about five years back and during the time of marriage some gifts were given by him to his son-in-law but his son-in-law was making demand of one Hero Honda Motor Cycle and a Television which he was unable to fulfil as a result of which, it was alleged that his daughter was being tortured by her in-laws and other relatives and ultimately killed her on 1.12.1994 by burning her and with the help of some villagers they have cremated the dead body. On the basis of that fardbeyan a case was instituted under Sections 498(A), 304(B) and 201/34 of the Indian Penal Code against eight persons including the Petitioners. The Petitioners said

that they are innocent and they have committed no offence but falsely implicated in the case with mala fide intention. During the course of investigation large number of persons were examined by the police and definite and positive evidence were collected, not only by the Investigation Officer but also by the Supervising Authorities. The Petitioners' case was that during the course of investigation large number of persons were examined by the police who have categorically stated that the deceased has died her natural death. After completion of investigation the police submitted chargesheet against the Petitioners u/s 306 of the Indian Penal Code. The Petitioners' further case was. that from the facts stated above and from the materials collected during the course of investigation it was apparent that the Petitioners are innocent and no offence u/s 304(3) or 306 of the Indian Penal Code was made out against the Petitioners However, on the basis of the chargesheet cognizance was taken u/s 306 of the Indian Penal Code against the Petitioners and the case was committed to the court of sessions for trial. Learned 3rd Additional Sessions Judge, Madhubani by the impugned order framed charges against the Petitioners for the offence under Sections 304(B) and 201 of the Indian Penal Code.

3. Mr. Vishwanath Prasad Singh, learned Counsel appearing on behalf of the Petitioners seriously assailed the order of the learned Additional Sessions Judge as being wholly illegal and without application, of mind. Learned Counsel submitted that while passing the impugned order framing charges against the Petitioners learned Sessions Judge have not considered any materials available on record and has passed the order in mechanical way. Learned Counsel submitted that learned Sessions Judge ought to have assigned reasons for framing charges. In support of his contention learned Counsel relied upon two decisions, one in the case of State of Karnataka Vs. L. Muniswamy and Others, and other in the case of Haji Minhajuddin and Others Vs. State of Bihar and Another,

4. On the other hand, Mr. R.B. Roy "Raman", learned Counsel appearing on behalf of the State supported the impugned order contending that while framing charges the Court was not obliged to assign reasons in the order. When the court below was satisfied with regard to the materials available on record then there is no bar for framing charge"s against the accused persons.

5. Before appreciating the rival contention of the learned Counsel it would be useful to look into two provisions of the Code namely, Section 227 and Section 228 which reads as follows:

Section 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: Framing of charge.--(1) If after such consideration and hearing as

aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--

(a) is not exclusively triable by the Court of Sessions, he may frame "a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

2. Where the Judge frames any charge under Clause (b) of Sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

6. From bare perusal and comparison of the aforesaid two provisions it appears that while in the case of discharge of an accused u/s 227 of the Code it is obligatory for the Judge to record his reasons for doing so. But while framing charge u/s 228 of the Code the provision does not say in a very specific word that the Court must record reasons. Nevertheless Section 228 provides that while framing charge, the Court must be of the opinion that there is ground for presuming that the. accused has committed an offence. In other words, there must be valid reasons and foundation for framing an opinion that the accused has committed an offence.

7. In the case of *State of Karnataka v. L. Muniswami and Ors.* (supra) the question for consideration before the apex Court was as to whether the Sessions Judge has the power to discharge an accused u/s 227 of the Code if after perusing the record and hearing the parties he comes to conclusion, for the reasons to be recorded, that there is not sufficient ground for proceeding against the accused. While dealing with this question their Lordship observed as follows:

This section is contained in Chap. XVIII called "Trial before a Court of Sessions". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case.

8. Although the question for consideration before the apex Court was with regard to the duty of the Judge while passing an order u/s 227 of the Code but the Supreme Court has taken notice of all the provisions of Chapter VIII and further

observed that the object of the provision which requires the Sessions Judge to record his reason is to enable the superior Court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. Let us now examine the impugned order passed by the learned Additional Sessions Judge which is reproduced hereinbelow:

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3- 2- 96 dqy vfHk;qDrksa esa dkjk/khu A vfHk;qDr lquhy dqekj >k dks dj k ls izLrqr fd, A lHkh "ks" k 3 vfHk;qDr x.ks" k >k jkds" k dqekj >k ,oa "kadj ,QZ la;/k nsok dk gktjh nh x;h A v- fu- vkbZ- mifLFkr gS A leLr 4 vfHk;qDrksa ds fo:) Hkk- n- fo- dh /kkjk 304 ?ch? 201 ds varxZr vkjksi xBu fd;k x;k A vkjksiks dk lkjka" k fgUnh esa i<+dj le>k;k x;k ftls vfHk;qDrksa us vLohdkj fd;k rFkk fopkj.k dk nkok fd;k A

fnukad 19- 9- 96 okLrs lk{; vfHkys[k lk{kh ykos A dkjk/khu vfHk;qDr dks vxyh frfFk rd ds fy, okil dkjk Hkstk x;k A

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9. From bare perusal of the impugned order it appears that the learned Judge has not even applied his mind with regard to existence of valid reasons for framing charge against the Petitioners under Sections 304(B) and 201 of the Indian Penal Code. This is evident from the fact that after completion of investigation the police submitted chargesheet against the Petitioners u/s 306 of the Indian Penal Code while the learned Judge framed charge against the Petitioners under Sections 304(B) and 201 of the Indian Penal Code. It is well settled, that at the stage of framing charge the Court must apply its judicial mind and to consider whether or not there is any ground for presuming the commission of the offence by the accused. The order framing charge affects the person's liberty substantially and, therefore, it is the duty of the Court to consider judicially whether the material warrants the framing of charge, it cannot blindly accept the decision of the prosecution that the accused be asked to face trial.

10. In the case of Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, the Supreme Court while considering the similar provision under the old Code had observed as follows:

Coming now to the facts of this case, in our view, the question principally depends on the scope and effect of the notification dated September 22, 1949, the Circular dated November 2, 1964, and the Deviation order dated June 25, 1965. If, on this material, this Court comes to the conclusion that there is no ground for presuming that the accused has committed an offence, then it can appropriately consider the charge to be groundless and discharge the accused. The argument theft the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for

presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution.

11. The distinction between the stage of framing of charge and the stage of recording a finding as to the guilt or innocence of the accused is that at the former stage, even a strong suspicion founded upon material and a presumptive opinion would enable the court in framing a charge against the accused but at the latter stage, there is every presumption in favour of the innocence of the accused, in the matter of determining his guilt and even in the matter of determining intention or knowledge affecting the gravity of the crime. Section 228 does not in terms direct that the court should pass a formal order giving its reasons for the framing of the charge. That the Legislature did not contemplate a formal order framing the charge is evident from the fact that while in Section 227 there is express mention that the order of discharge passed by the court should be supported by reasons, there is absence of such a provision in Section 228(1) because an order of discharge, being a final order is liable to be challenged. The Presiding Officer of a court of Sessions must take an intelligent part in the proceedings and exercise due care while framing the charges or examining the accused persons as these are not matters of empty formality. He should not merely be 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.

12. It is well settled that framing charge on the basis of mere vague allegations in the absence of any material to connect the accused with the alleged offence would amount to an abuse of the process of the Court. While framing the charges against the accused from the materials on record the Court should see that there is prima facie case against the accused. The test to determine a prima facie case would naturally depend upon the facts of each case. Where materials placed before the Court disclosed grave suspicion against the accused which had not been properly explained, the Court would be fully justified in framing a charge and proceeding with the trial. Though stating reasons for framing the charge against the accused may not be in stricto sensu, a statutory requirement, but the interest of justice and propriety demand that the trial Judge should state in short the materials and reasons from which a superior Court can Judge whether the order was passed on proper application of judicial mind.

13. As stated above, from the reading of the impugned order it is manifestly clear that the learned Judge while framing charge has proceeded mechanically and not even applied his judicial mind. There is no indication at all that the Judge has considered any material for presuming that the accused persons have committed an offence under Sections 304(B) and 201 of the Indian Penal Code. That being the position, I have no hesitation to hold that the impugned order passed by the learned Judge is bad in law and is liable to be quashed.

14. In the result, this application is allowed and the impugned order dated 3.9.1996 passed by 3rd Additional Sessions Judge, Madhubani is set aside and the matter is remitted back to him for passing a fresh order u/s 228 of the Code of Criminal Procedure in accordance with law in the light of the direction and observation made above.