
(2023) 11 CAL CK 0048
In the Calcutta High Court
Case No : Criminal Revision No. 1836 Of 2019

Swapan Kumar Mishra & Ors.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 29-11-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 324

Code Of Criminal Procedure, 1973 — Section 227, 228, 228(1)(b), 228(2)

Citation : (2023) 11 CAL CK 0048

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Tapan Dutta Gupta, Ziul Haque, Parvej Anam, Anwar Hossain,
Manoranjan Mahata

Final Decision : Disposed Of

Judgement

Shampa Dutt (Paul), J

1. The present revisional application has been preferred praying for quashing of the FIR recorded as Lalgah P.S. Case No. 84/17 dated 14.09.2017 under Sections 324/307/34 IPC pending before the learned Assistant Sessions Judge, Jhargram and the proceeding being Sessions Trial No. 32/2018 including the order dated 04.01.2019 of framing of charges under Sections 324/307 IPC and all orders subsequent thereto passed by the learned Assistant Sessions Judge, Jhargram before whom the proceeding is pending for trial.

2. The petitioners case is that the charge framed by the Trial Court is not in accordance with law and is thus liable to be set aside.

3. Heard the learned counsel for the petitioner and the learned counsel for the State.

4. Perused the materials on record. Considered.

5. Vide an order dated 04.01.2019 the learned Trial Judge was pleased to frame

charge. The said order is reproduced here for convenience.

S. Tr. 32/2018

Order No. 5

04.01.2019

Today is fixed for appearance and charge.

The accused namely, Swapan Kumar Mishra, Tarun Mishra and Barun Mishra on Court bail are present.

Ld. P.P. in charge and Ld. Defence Advocate are also present.

The record is taken up for framing of charge against the above named accused person.

Perused the FIR, the charge-sheet.

Heard both sides. Considered.

I am satisfied that there are materials against the accused by which of prima facie case under Sections 324/307/34 of the IPC is made out.

Hence, charge under Section 324/307/34 of the IPC is framed against the accused Swapan Kumar Mishra, Tarun Mishra and Barun Mishra and is written in separate charge form. Let the same be kept with the record.

The contents of the charge is read over and explained to the accused in Bengali to which each of them pleaded not guilty by saying. (Nirdosh) and claimed to be tried.

Let the accused be tried on the above charge.

Fix 02.04.2018 for evidence.

Issued summons accordingly.

Accused persons on court bail as before.

Dict. & corrct. by me

Sd/-

Assistant Sessions Judge

Jhargram

6. Learned counsel for the petitioner has submitted that though the learned Judge has stated in his order dated that 04.01.2019 the charge is written in a separate charge form and kept with the record, the charge form shows that it has been prepared and signed on the next dated is on 5th day of January, 2019.

7. Section 228 of the Cr.P.C. is as follows:-

"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)

(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."

8. The apex court in *Sajjan Kumar v CBI* (2010)9 SCC 368: (2010)3 SCC(Cri) 1371 while dealing with the scope of secs. 227 and 228 of the Code, laid down the following principles:-

(i) "The Judge while considering the question of framing the charge under section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose 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.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court any basic infirmities, etc. However, at this state, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the materials on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the materials on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of sections 227 and 228, the court is required to evaluate the materials and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the

prosecution states as gospel truth even if it is opposed to common sense or the board probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal”

In *State v L. Muniswamy* (1977)2 SCC 699, a three-Judge Bench observed : “that at the state of framing the charge, the court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person’s liberty substantially, need for proper consideration of material warranting such order was emphasized.

9. Section 228(1)(b) Cr.P.C. lays down that the judge shall frame in writing a charge against the accused.

10. Section 228(2) Cr.P.C. lays down that where the Judge frames any charge under clause (b) of Sub-section (1) the charge shall be read and explained to the accused.

11. Thus in this case it appears that the Court did not comply with the mandatory provisions of Section 228 Cr.P.C.

12. Framing of charge requires application of mind, which is clearly absent in this case and thus an abuse of the process of Court/law.

13. As the formal charge form is dated 05.01.2019 and the order noting that the charge was read over and explained to the accused is dated 04.01.2019, it appears that the charge framed in this case is not as per Section 228 Cr.P.C. and thus not in accordance with law. The said order (dated 04.01.2019 and consequently the formal charge dated 05.01.2019 are) thus are liable to be set aside.

14. Considering the materials on record and in view of the observation of the Supreme Court in *Gian Singh vs State of Punjab & Anr.*, SLP (Crl.) No. 8989 of 2010, on 24 September, 2012 and *Daxaben vs The State of Gujarat & Ors.*, 2022 LiveLaw (SC) 642, on July 29, 2022 the prayer for quashing of the proceedings before the Trial Court stands rejected.

15. But in view of the observations above, the order date 04.01.2019 in Sessions Trial No. 32/2018 framing of charges u/s. 324/307 IPC and all orders passed thereafter by the learned Assistant Sessions Judge, Jhargram including the formal charge dated 05.01.2019 are set aside.

16. CRR 1836 of 2019 is accordingly disposed of with the direction that the Trial Court shall frame charge afresh as per the relevant provisions of Cr.P.C. in presence of both side within a month from the date of receipt of this order and proceed with the trial accordingly.

17. All connected applications, if any, stand disposed of.
18. Interim order, if any, stands vacated.
19. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.