

(1999) 05 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Criminal Revision Petition No. 3 of 1999

Tarlochan Singh and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-05-1999

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 227

Citation : (2000) KashLJ 179

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Sunil Sethi, Navneet Dubey , D.S.Saini, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, Judge.

1. This revision is directed against the order passed by learned 1st. Additional Sessions Judge, Jammu in case No. 51/Sessions, dated

15.12.1998, whereby charge under Sections 302 and 307 R. P. C. read with Section 149 RPC has been ordered to be framed against Tarlochan

Singh, petitioner1 and under Sections 302 and 307 RPC read with Sections 149 and 109 RPC has been ordered to be framed against other accusedpersons.

2. Before the trial Court in all six persons has been arrayed as accused, out of whom Balbir Singh is absconding and against him general warrant of arrest has been issued. With a view to properly understand the case as well as for appreciating the submissions of the learned counsel urged in the case, it is necessary to refer to a few facts, which are relevant and material for determination of this Revision Petition.

3. As per prosecution case, on 3.6.1998 Tarjinder Singh in the early hours of the

day had gone to his fields to water those. He found that the course of water had been changed by S/Shri Ranjit Singh, Balbir Singh and Avtar Singh sons of Hari Singh, Harbans Singh and Thakar Singh sons of Balkar Singh petitioners. At this stage he returned back and complained in this behalf to his uncle Gurmit Singh, hereinafter referred to as the complainant, was also informed that the above said five persons have also threatened of dire consequences.

4. Complainant accompanied by Tarjinder Singh, Jasbir Singh and Mst. Parsan Kour went to the fields and diverted the water in a manner that it started cultivating their fields. This was the cause of annoyance to the accused persons. After having diverted the water, complainant accompanied by three other named above was on his way back to their houses. While all of them had reached outside their village near a 'Sareen1 tree, Bus bearing Registration No. JKO2E 8815 was found there, owned by Balbir Singh. At such time, it was being driven by Tarlochan Singh Driver and other five persons, namely, Ranjit Singh, Avtar Singh, Balbir Singh, Harbans Singh and Balkar Singh were sitting inside the bus. Further case of the prosecution is that all of them had formed an unlawful assembly and gave a Lalkara loudly directing petitioner1 Tarlochan Singh, accused driver of the bus to drive the same in question with a view to over run the complainant and his companions, so that the daily trouble is brought to an end. At this point of time, Gurmit Singh got to and Banna of the field alongwith Mst. Parsan Kour and Tarjinder Singh got. on to the Aar Banna alongwith Jasbir Singh. Despite that Tarjinder Singh at the instance of Ranjit Singh, etc. diverted the bus and then accelerated the same towards the Aar Banna. Both Tarjinder Singh and Gurmit Singh saved themselves by jumping, whereas Jasbir Singh and Mst. Parsan Kour were engulfed with the Bus. Both of them were injured. Meanwhile Tarlochan Singh alongwith others fled away from the spot towards National Highway. As per the statements recorded under Section 161 Cr. P. C. particularly of Tarjinder Singh and Gurmit Singh, it is clear that all the six above named persons with a criminal and common intention to commit the murder had made the Bus to over run. This was on furtherance and after the Lalkara was given as aforesaid that Trilochan Singh drove the Bus.

5. In the aforesaid circumstances, after incident Gurmit Singh and Tarjinder

Singh brought the injured Jasbir Singh and Mst. Parsan Kour in an injured condition to Samba for treatment. Report was lodged. Case was initially registered under Sections 307, 147 and 109 RPC vide FIR No. 144/98. Mst. Parsan Kour died in the Government Medical College Jammu on 461998, i.e., on the next day of occurrence. Mr. Sethi, learned counsel for the petitioner forcefully urged by referring to the statements of PWs under Section 161 Cr. P. C. recorded by the police during the course of investigation with special reference to those Tarjinder Singh and Gurmit Singh that they have spoken about 'Lalkara' only. If there is nothing to suggest as to what was actually spoken by each one of the petitioners 2 to 5 and absconder Balbir Singh requiring petitioner1 Tarlochan Singh to drive the Bus a with a view to over run Tarjinder Singh, Gurmit Singh, Jasbir Singh and Mst. Parsan Kour. It is also urged that unless specific impact was prima facie demonstrated, allegations being general in nature are not enough for framing of charge, as such, all accused are liable to be discharged. Alternatively, it was pointed out that offence, if any, that can said to have been committed is only by Tarlochan Singh, which at the most is for which a charge under Section 304A R. P. C. is called for and nothing more. This Mr. Sethi urged without either admitting or conceding the prosecution case. All these pleas have been controverted by the learned Government Advocate as well as the learned counsel for the complainant. Both of them have submitted that in the facts and circumstances as well as on materials on record, this revision is not at all maintainable. As according to them, there is enough material on the record of this case to sustain the charge, they prayed for dismissal of the Revision Petition as being incompetent as well as on examination of materials on record.

6. What is required to be seen by the Court at the stage of framing of charge is as to what weight and value is to be attached to the evidence collected by the police during the course of investigation and other documents attached with the challan. On examination of such documents, it has to be seen whether accepting those on their face value, requirement of an offence is made out against the accused or not. While doing so and examining the case at the stage of sections 227 and 228 of the Code of Criminal Procedure, the Court is neither expected nor is required to

consider the material except for the purpose of ascertaining whether there is sufficient ground to proceed against the accused or not.

7. In addition to this, another circumstance, which is relevant and is to be taken note of at the charge stage is whether prima facie the statements

and materials on the phase file are acceptable or not. It may also be noted here that at the stage of framing charge, no independent corroboration is required.

8. Mr. Sethi, learned counsel for the petitioners in support of his contention has placed reliance on these decisions 1999(1) Recent Criminal

Reports 218, Mukhtar Ali Applicant Vs. Judge Family Court Allahabad Opposite Parties (Allahabad High Court), 1992 (III) Current Criminal

Reports 2429, State of Punjab Appellant Vs. Tehal Singh and Another. Respondents, 1996 (9) S. C. C. 766, Satish Mehra, Appellant Vs. Delhi

Administration and another, and AIR 1995 S. C. 2411, Teja Singh Appellant Vs. Mukhtar Singh and others, Respondents.

9. In the case of Mukhtar Ali Vs. Judge Family Court, Allahabad (Supra), the matter under consideration before the Court was in relation to

Section 125 and in that context, Court considered that the order of interim maintenance was held to be not an interlocutory order as it saddles a

responsibility on the party for paying maintenance and as such substantially affects his rights. Therefore, it was held to be not interlocutory order.

On examination of Judgement, it is clear that firstly as it is a Judgement on its own facts and secondly it can't be taken to be a binding precedent so

as to be followed even having persuasive value for this Court.

10. In the case of 1992 (III) Current Criminal Reports 2429 (Supra), a Division Bench of Punjab and Haryana High Court was examining the

proposition whether it is possible to convict an accused of the constructive liability for murder on the basis of Lalkara allegedly raised by him.

There are number of reasons so far this judgement being not advancing the case of the petitioners in any manner. These are that the Court was

examining an appeal against acquittal, wherein though the Court has the power to appraise the evidence, when it comes to the conclusion that the

view taken by the Court below while ordering acquittal was not possible and evidence pointed out to only one conclusion leading to the guilt of the

accused persons. Other reason being that with the acquittal of an accused,

presumption in his favour of his innocence is reinforced and above all it was after the evidence had been recorded during the course of the trial that the Court found that on the basis of Lalkara, conviction cannot be upheld. As already noticed in the present case, it is not Lalkara alone, on the basis of which all the accused persons have been charged with, when the attending circumstances of the case are seen before commission of the offence, when Tarlochan Singh was shouted at loudly by his other alleged coaccused to start the Bus and over run the petitioners, this case does not in any manner advance the argument urged on behalf of the petitioners.

11. On examination of decision in the case of Satish Mehra Appellant, Vs. Delhi Administration and another, principle at the stage of framing of charge has been examined and amongst other things, it was observed that the test to be applied at this stage is whether there are sufficient grounds for proceeding against the accused or not. At this juncture, Court is not debarred from looking into any material produced by the accused at that stage and hearing is not confined to oral arguments alone. So far this principle of law is concerned, there can be hardly any dispute with it.

However, in this case, there was a dispute between husband and wife and accusation made was that former had molested their infant child. On facts it was further found that the attitude of the wife was vengeful, therefore, in such circumstances possibility of the wife manipulating genitals of the child with a view to concoct medical evidence against the accused was not ruled out. Thus in such circumstances, proceedings and charge framed by the Sessions Judge under Sections 354 and 376/511 I. P. C. was quashed. When a reference is made to the principle governing the framing of charge against the accused or discharging him, it was observed as under:

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 Code¹) 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.

Sections 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".

(Vide State of Bihar Vs. Ramesh Singh and Supdt. and Remembrance of Legal Affairs Vs. Anil Kumar Bhunja).

i addition to this, observations made in paras 14 and 15 of this Judgement, which re also material are also reproduced herein below: ,

14. The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is

necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the court and saves much human efforts and cost. If the

materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out saying that such documents need

be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his

powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

15. But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the court should not be

wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful

that most of the Sessions Courts in India are under heavy pressure of workload. If the Sessions Judge is almost certain that the trial would only be

an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself.

On the basis of the aforesaid observations what follows is that the Court has undoubtedly power to consider and weigh the evidence band other

materials produced before it to as certain whether or not a prima facie case is

made out or not. Whether such a case exists would depend upon facts of each case. Thus no rule of universal application can be laid in that behalf. While doing so neither roving enquiry into pros and cons nor the weighing of evidence as in the case of a trial is required muchless justified under law. Only requirement is that whether such a statement being accepted as it is, what is going to be the likely outcome.

12. Again no benefit can be derived from the decision of Teja Singh, Appellant Vs. Mukhtiar Singh and others, (Supra), while considering one appeal filed by Teja Singh (PW2), the defacto complainant for converting life imprisonment to death penalty imposed upon Mukhtiar Singh and Mohinder Singh and the other appeal filed by these two accused persons for their acquittal. It was in this context of the appeal filed by Teja Singh that the question of 'Lalkara' was considered. Relevant paras 6 and 7 of this Judgement are to the following effect :

6. Coming now to the other appeal we must hold in view of the nature of evidence adduced during trial to connect the other accused persons with the murder of Ajaib Singh, that the learned trial Judge's finding that they were entitled to the benefit of reasonable doubt cannot be said to be perverse for against the respondent Mukhtiar Singh, the only incriminating evidence was that he raised lalkara and against the other two no evidence of any overt act was laid. As regards the grievance of the complainant that in the facts and circumstances of the case the convicts ought to have been awarded death sentence we can only say that this is not one of the rarest of rare cases meriting such punishment. 7. On the conclusions as above we dismiss both the appeals. The appellant Mohinder Singh, Son of Mukhtiar Singh, who is on bail, will now surrender to his bail bond to serve out the sentence.

This Judgement is wholly inapplicable to the present case.

13. When a reference is made to the statements of Tarjinder Singh and Gurmit Singh, complainant coupled with other evidence collected during the course of investigation and documents attached with the Challan, it cannot be said that this is a case of no evidence as was forcefully urged by Mr. Sethi, learned counsel for the petitioner. Rather there is enough material collected by the prosecution for the purpose of framing of charge. Thus no fault can be found with the order of the trial Court.

14. In AIR 1977 S. C. 2018, State of Bihar Appellant Vs. Ramesh Singh, Respondent, it was observed as under :

Reading the two provisions together in Juxtaposition 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 judgement

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 under S.227 or S.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 the 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

under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under

S.227.

15. In 1997(4) S. C. G. 393, State of Maharashtra, Appellant Vs. Priva Sharan Maharaj and others, Respondents, Supreme Court while allowing

the appeal of the State against the order of discharge passed by the High Court, thereby quashing the charge framed by the Sessions Judge and

remanding the case to the Court of Sessions to proceed further with the trial of the case in accordance with law and with a further direction to do

so after examining the material and hearing the learned Public Prosecutor and the opposite lawyer for the accused on the question of amending or

altering the charge so as to make it consistent with the relevant provisions of the Code, etc. observed as under :

7. The learned counsel for the appellant contended that the High Court far exceeded the limits of consideration at Section 227 stage and that has

led to failure of justice. It committed an error of sifting and weighing the material placed before the Court by applying the standard of test and proof

which is to be applied finally for deciding whether the accused is guilty or not. What was required to be considered at that stage was whether the

material placed before the Court disclosed a strong suspicion against the accused. On the other hand, relying upon the judgements of this Court in

Union of India Vs. Prafulla Kumar Samal and Niranjajan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijjaya, the learned counsel for the

respondents submitted that while considering an application for discharge, if there is no sufficient ground or proceeding against the accused, the

Court 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 is made out. The material placed before the Court must disclose grave suspicion against the accused. When two views are equally

possible and if the Court finds that the material produced before it while giving rise to some suspicion does not give rise to grave suspicion against

the accused, it will be fully within its right to discharge the accused. He also submitted that at Section 227 stage the Judge 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 appearing in the case and so on. This is what the learned Additional Sessions Judge

failed to do and the High Court has done. He has thus supported the Judgement passed by the High Court.

8. The law on the subject is now well settled, as pointed out in *Niranjan Singh Punjabi Vs. Jitendra Bijjaya* that at sections 227 and 228 stage the

Court is required to evaluate the material and the documents on record with a view to finding out if the facts emerging there from 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 that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the

broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if

there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not

for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

9. What we find from the judgement of the High Court is that the learned Judge, in order to ascertain the correct and legal position, referred to

various decisions and quoted extensively from them but did not apply the law correctly. The judgement also contains some quotations which have

no relevance. After referring to the caselaw, the learned Judge has observed as under:

Considering the facts and circumstances as obtained in the instant case, I am reminded of the learned observations of their Lordships while

discussing or reflecting on the criminal cases." And thereafter quoted the following passage from the decision of this Court in *State of Punjab Vs.*

Jagir Singh : (SCC pp, 28586, para 23) "23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy.

It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event

in real life and is the product or interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the

commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every

case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused,

the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

That was not a case dealing with the scope and nature of enquiry at the stage of framing of charge, those observations were obviously made in the context of appreciation of evidence and standard of proof required for convicting the accused. This clearly indicates that the learned Judge failed to apply the correct test.

16. No other point is urged.

17. On an overall view of the whole case as well as after examining all the facts and circumstances existing on the file in this case, order passed by

the learned Court below framing charges under different Sections vide order dated 15.12.1998 calls for no interference and thus this revision

petition is hereby rejected and interim order staying proceedings is hereby vacated. Before parting with, it may be clarified that the trial Court

would proceed further in the matter without being in any manner influenced by any observation made here in this Judgement, which was aimed at

only for the purpose of disposal of this Revision Petition.

18. File of the case is here and the petitioners are in custody, impugned order indicates that the learned trial Court had fixed three days Calendar

for recording evidence, when the proceedings were stayed. Parties through their learned counsel are directed to appear before the trial. Court on

05.06.1999, when learned Court below will make all out efforts for early disposal of the case keeping in view the fact that the petitioners are in

custody and number of witnesses is also 14 only. Learned Government Advocate has assured that all possible assistance would be rendered by

the prosecution forgetting the witnesses served for the dates those may be fixed by the trial Court.