

(2011) 02 SC CK 0027

In the Supreme Court Of India

Case No : Criminal Appeal No. 452 of 2011 (Arising out of Special Leave Petition (Criminal) No. 6699 of 2010)

Tej Bir and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Arms Act, 1959 — Section 27, 30

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 401

Penal Code, 1860 (IPC) — Section 120B, 307, 34

Citation : AIR 2012 SC 943 : (2012) 2 ALT(Cri) 47 : (2012) CriLJ 1488 : (2011) 6 JT 376 : (2011) 4 KCCR 389 SN : (2012) 1 MLJ 510 : (2011) 5 SCALE 250 : (2011) 11 SCC 556

Hon'ble Judges : G. S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Arbind Choudhary and Atishi Dipankar, for the Appellant; Manjit Singh, Ramesh Kumar, Vishal Malik, Sanjay Malik and M.C. Dhingra, for the Respondent

Final Decision : Allowed

Judgement

Asok Kumar Ganguly, J.—Leave granted.

2. This appeal has been preferred from the judgment of the learned Single Judge of the High Court of Punjab and Haryana dated 1st April, 2010, in Criminal Revision No. 1486/2009 (O. & M.) whereby charges framed by the learned Additional Sessions Judge, FTC Karnal, Haryana dated 17th February, 2009, in M.S.C. case No. 41/2009 against Kewal Kishan, one of the accused, was quashed. The charges framed against Kewal Kishan are, inter alia, u/s 120B/307 read with Section 34 IPC and Sections 27/30 of the Arms Act.

3. According to the Appellant No. 1, who was the informant in the said F.I.R. No. 217 dated 29.6.2008 the facts of the case are that Ram Narain had three sons: Sher Singh, Kehar Singh and Mehar Singh and a daughter Raj Bala. Kewal Kishan

is married to Raj Bala. Sher Singh was murdered on 29th March, 2005 and was survived by his wife Babita and two children. Kehar Singh also passed away in 2007. After the demise of these two brothers, some disputes with respect to the finances and property of the family arose.

4. To resolve these disputes, a panchayat was convened on 29th June, 2008 at Ram Narain's house in the village Risalwa. This was attended by Appellant No. 1, Tej Bir, his father Pratap Singh, uncle Ranbir Singh and cousin Shishpal Singh. Others who attended the panchayat included Narendar, Mahender Singh, Balwant Singh, Som Dutt, Mehtab, Jai Bhagwan and Jasmer Singh. The accused Raj Bala, with her son Sarveshwar alias Jony had gone to attend the panchayat. It was further submitted that during the course of the panchayat, an altercation arose between those present, and Raj Bala and Sarveshwar. Resultantly, the mother and the son pulled out their pistols and fired a round each. The round fired by Sarveshwar hit Narendar, Appellant No. 2 in his belly, while the round fired by Raj Bala hit Tej Bir, Appellant No. 1 in his right arm. Mehar Singh also fired a round. It is stated that they then fled from the scene in a car (Maruti Alto), bearing number HR - 06M -2755, registered in the name of the said Kewal Kishan. It was repeatedly stated in the F.I.R. that the entire conspiracy was hatched by Kewal Kishan. The injured persons were immediately admitted to Community Health Centre, Assandh.

5. The police were informed of this incident and the Inspector/Station House Officer of Police Station, Assandh reached the said Community Health Centre, and preferred an application to the Medical Officer so as to know the position of the injured. On being satisfied that the injured persons were fit to be examined by the police, the Inspector examined the injured, and recorded their statements u/s 161 Code of Criminal Procedure An F.I.R. was then registered against Kewal Kishan, Mehar Singh, Raj Bala and Sarveshwar. The same day, Kewal Kishan, Mehar Singh and Raj Bala were arrested, and the said car belonging to Kewal Kishan was taken into possession. The fourth person named in the F.I.R., Sarveshwar escaped arrest. A licensed revolver of 0.32 bore, and 4 live rounds were seized from the possession of Raj Bala. After the completion of the investigation, a Final Report u/s 173 Code of Criminal Procedure was submitted to the Magistrate with respect to Kewal Kishan, Mehar Singh and Raj Bala. Thereafter, charges were framed.

6. Kewal Kishan preferred an application u/s 401 of the Code of Criminal Procedure, 1973 before the High Court, whereby the High Court quashed the order of Additional Sessions Judge with respect to the charges framed against Kewal Kishan inter alia on the ground that there was no evidence against him.

7. It is well settled that at the stage of framing of charges the High court should not exercise its power of revision by way of quashing the charges by confining its attention only to the recitals in the F.I.R.

8. An F.I.R. can never represent the entire evidence of the case. In the instant

case, even though in the F.I.R., a reference was made to Kewal Kishan as masterminding of the conspiracy, the High Court should have refrained itself from quashing the charges by just referring to the recitals in the F.I.R.

9. In the case of State of M.P. Vs. S.B. Johari and Others, it has been held that High Court in criminal revision cannot appreciate and weigh the materials on record for coming to the conclusion that charge against the accused could not have been framed. This Court held that the settled legal position is that at the stage of framing of charge, the High Court has to prima facie consider whether there is sufficient ground for proceeding against the accused and the High Court is not required to appreciate the evidence and arrive at the conclusion whether the materials on record are sufficient for conviction of the accused or not. The test at this stage should be, whether after accepting the charge, as framed, any case is made out.

10. But the same is not the situation here if we look at the charge.

11. The same position has been reiterated by this Court in Ram Kumar Laharia Vs. State of Madhya Pradesh and Another, in paragraphs 8 and 9.

12. In view of the aforesaid settled legal position this Court cannot affirm the view taken by the High Court.

13. In the course of hearing of the matter before this Court, learned Counsel appearing for Respondent No. 2 made a statement that Respondent No. 2 has been acquitted by the trial court. This Court has gone through the judgment of the trial Court and found that the aforesaid statement of the learned Counsel is not correct. Since the charge against Respondent No. 2 was quashed by the High Court and he did not have to face the trial, there is no question of acquittal of Respondent No. 2. A person cannot be acquitted unless he faces the trial.

14. For the reasons aforementioned, so far as charge against Respondent No. 2 is concerned, the judgment of the High Court in quashing the charge is set aside.

15. Charge framed against Respondent No. 2 is restored. Let him face the trial in accordance with law. The appeal is allowed.