

(1993) 04 PAT CK 0033

In the Patna High Court

Case No : Criminal Miscellaneous No. 14289 of 1992

Vibhuti Kumar @ Vibhuti Yadav and Another

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 29-04-1993

Acts Referred:

Citation : (1993) 04 PAT CK 0033

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—The Petitioners being aggrieved by the order dated 28.2.92, passed by the court below, has moved this Court for quashing the same. By reason of the aforesaid order, the learned court below has rejected the petition filed by the Petitioners u/s 227 of the Code of Criminal Procedure (hereinafter referred to as the Code).

2. On 29.8.92, the Petitioners filed a petition u/s 227 of the Code praying therein to give them an opportunity of hearing on the point of framing charge on the ground that though police has submitted charge sheet against the Petitioners under various sections of the Indian Penal Code (hereinafter referred to as the I.P.C.) including Section 307 of the I.P.C., materials collected by the police do not disclose the commission of offence punishable u/s 307 of the I.P.C.

3. By reason of the impugned order, the 3rd Addl. Session Judge, Patna, after considering the facts and law including the materials available on record, rejected the plea of the Petitioners and held that a prima facie case u/s 307 I.P.C. is made out against the Petitioners.

4. For disposing of this application, it is neither necessary nor advisable for me to mention in any great detail the fact of the prosecution case against the Petitioners or to refer all the materials and the evidence which may be produced by the prosecutor when the trial proceeds in the sessions court. This unnecessary details have to be avoided so that it may not prejudice either the prosecution case or the defence of the Petitioners.

5. u/s 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either u/s 227 or Section 228 of the Code.

6. Section 227 of the Code reads as follows:

If, upon consideration of the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

7. Similarly, Section 228 of the Code reads as follows:

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 Session, 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.

8. Reading the two provisions together in just a position it would be clear that at the beginning and at 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. It is true that 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. It is an established principle of law that the standard of test and judgment 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 u/s 227 or 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 his conviction.

9. In this connection, reference may be made to the case of Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, , in which the Apex Court has laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of process could not be refused. Their lordships further observed that unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case.

10. In the case of Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, , after elaborate discussions of law, the Supreme Court has laid down as follows:

It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

11. Keeping in mind these established principles of law, I may narrate in nutshell the facts of the case.

12. A written report was filed before the Officer-in-Charge, Gardanibagh (Sachivalaya) Police Station by Shri T.C.A. Srinivas Ramanujan, Health Commissioner of the State of Bihar alleging, inter alia, that being. Health Commissioner of the State of Bihar, he is also Incharge of Indira Gandhi Institute of Medical Science, Patna. On 27-2-92 at 5 P.M., when he was at his official Chamber in the Secretariat and was consulting with Shri Anjani Kumar Singh, Under Secretary of the Health Department in regard to some official work, in the meantime, Deputy Secretary (Vigilance) Shri G.N. Dubey, Deputy Secretary Shri R.K. Mishra, Shri Shashank Shekhar Sinha, Joint Secretary, Bihar; State Electricity Board, Shri (Dr.) Baldeo Raj, an Officer of Delhi, Smt. Sushma Singh, Divisional Commissioner, Santhal Pargana and the Sectional Officer came to his Chamber and the informant was talking with them on their respective related matters. At 5.30. P.M., Petitioner No. 2, namely, Shri Ram Sharan Yadav, a Member of Parliament entered his Chamber and enquired about his work.

Petitioner No. 2 wanted to know as to why the order for taking the admission of his daughter namely, Swati, in the Mahatma Gandhi Medical College, Jamshedpur is not being issued. The Informant intimated the Petitioner No. 2 that on receipt of the concerned file, he will do the necessary work. On this reply, Petitioner No. 2 told the Informant that he was withholding the file and intentionally did not want to do his work and he had some proof for the same. The Informant replied that the allegation alleged against him is baseless, inasmuch as, he has no such intention. On this, the Petitioner No. 2 became furious and started abusing not only him but his parents, sister and daughter in very filthy language. In the meantime, two more persons had entered in his Chamber out of whom one was the nephew of Petitioner No. 2. Along with them 10-12 Gundas also entered into his Chamber and at the instigation of Petitioner No. 2, his nephew and the third person rushed towards him to assault the informant and the said Petitioner No. 2 took out his Chappal and ran towards him to assault. The nephew of the Petitioner No. 2 had thrown a chair upon the informant but due to timely intervention of the officials present there, the informant could be saved any how. Thereafter, the Petitioner No. 2 and his nephew started assaulting the informant with fists and slaps. They also assaulted the orderly peon of the informant Shri Mandal who wanted to save the informant. Repeated requests of officers present there could not pacify the matter and in course of such occurrence they all were commanding each other to bring pistol and revolver from the Car to kill the informant. In the meantime, Shri Mundrika Prasad Yadav, the State Health Minister came to the Chamber of the informant and took all of them to his official chamber. After the incident, the informant got himself treated by the doctor. The informant further alleges that in this way the aforesaid Member of Parliament (Petitioner No. 2) and his men have caused fatal injuries and abused him as also obstructed him in discharging his official duties.

13. In his written report, the informant has disclosed that in the Mahatma Gandhi Medical College, Jamshedpur there are four seats under the quota of Tata Steel and Tata Steel has recommended the names of eight persons against those quotas and the number of Swati was at serial 7.

14. On the basis of this written report, the Officer in-Charge instituted a case under Sections 452, 353, 323, 307, 504, 34 I.P.C. read with Section 27 Arms Act against Petitioner No. 2 and his nephew and 10-12 unknown persons.

15. On completion of the investigation and after recording the statement of the witnesses, the Investigating Officer submitted charge sheet under the aforesaid sections of the I.P.C. against two persons showing Petitioner No. 2 as absconder. Petitioner No. 2, however, surrendered in Court and subsequently enlarged on bail.

16. The learned C.J.M., Patna on the basis of charge sheet took cognizance of the offence and transferred the case to the Court of Judicial Magistrate Ist Class, Patna who committed the case to the court of session and learned Session Judge, Patna transferred this case to the 3rd Add. Sessions Judge, Patna for trial.

17. Before the 3rd Addl. Sessions Judge, Patna, the Petitioners filed a petition u/s 227 of the Code with a prayer not to frame charge u/s 307 I.P.C. and to send back the case records to the C.J.M., Patna for trial. This prayer, as stated earlier, has been rejected by the impugned order and as such this application u/s 482 of the Code before this Court.

18. Mr. Braj Kishore Prasad, learned Senior Counsel appearing on behalf of the Petitioners has raised several points while assailing the impugned order. Firstly, he has submitted that from the allegations made in the F.I.R., it cannot be said that there was any intention of killing the informant. He further submitted that there is a difference between intention and attempt and in this case, there is no attempt to kill, inasmuch as, the accused persons only told each other to bring pistol/revolver from the Car. Advancing his argument, learned Counsel further submitted that even taking the allegations made in the F.I.R. as true, prima facie no case u/s 307 I.P.C. has been made out and as such the offence is triable by the Magistrate and not by the Sessions Court.

19. Learned Counsel in support of his contention has relied on a decision reported in Malkiat Singh Vs. The State of Punjab, and has submitted that there is a distinction between preparation and attempt to commit an offence. Mr. Prasad has also relied in the case of Sarju Prasad Vs. State of Bihar, and has submitted that the allegation alleged in the F.I.R. does not constitute an offence u/s 307 of the I.P.C. and as such the learned court below should have transferred the case to the Magistrate for trial after framing charge u/s 323 I.P.C.

20. Mr. Arshad Alam, learned Counsel appearing on behalf of the State, on the other hand, submitted that when the court below has framed charge after full consideration of the allegations made in the F.I.R. as well as the evidence recorded by the Investigating Officer this Court should be loath in exercising its inherent jurisdiction u/s 482 of the Code.

21. Mr. Alam has referred in extenso various paragraphs of the case diary and has submitted that the evidences of the witnesses will show that the accused persons entered the official chamber of the informant with the very intention of killing him. It is submitted that the very fact that the accused persons asked each other to bring pistol and revolver from the Car is enough proof of showing the intention of the accused persons. He has also referred to the supervision note of the Superintendent of Police who supervised the investigation.

22. In this case, looking to the allegations made in the written report and the various paragraphs of the case diary, it is clear that the accused persons including the Petitioners had entered the chamber of the informant with some intention. It is a fact that when the Petitioner No. 2 was not satisfied with the reply given by the informant as to the admission of Swati in the aforesaid College, the Petitioner No. 2 with the help of other accused persons man-handled the informant and nephew of the Petitioner No. 2 even threw a chair on the informant. It is also a fact that the informant did not receive any injury on

account of the throwing of the chair due to timely intervention of some officials present there. But if that chair would have hit the informant, there might have been some unfortunate occurrence. Some of the witnesses examined by the I.O. have categorically stated that if they would not have been there, the informant might have been killed. Moreover, asking each other to bring pistol/revolver from the Car clearly shows the intention of the accused persons present there. The informant was assaulted by fists and slaps in also narrated in the written report.

23. Section 306 I.P.C. reads, as follows:

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

24. I may quote at this stage the observations of the Apex Court in the case of State of Maharashtra Vs. Balram Bama Patil and Others, which are as follows:

To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference to all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

25. The decision relied upon by Mr. Prasad in support of his argument, is of no assistance. The decision reported in Sarju Prasad Vs. State of Bihar, relied by the learned Counsel is a decision after conviction, where the Supreme Court after discussing the evidence on record, has held that the offence alleged cannot be punishable u/s 307 of the I.P.C.

26. In exercising the power u/s 482 of the Code, this Court cannot assume jurisdiction of a trial court and quash the order of framing charge when a court of competent jurisdiction, after being satisfied with the materials available on record, comes to a finding that prima facie case has been made out for proceeding against an accused person for an offence under a particular section.

27. In the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, , the Supreme Court laid down the following principles at page 369 (para 10):

Thus on a consideration of the authorities mentioned above the following principles emerge:

(1) That the Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to shift 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however doe not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting trial.

28. Having considered the arguments of the parties and on the authoritative principles of law laid down by the Supreme Court, I am of the opinion that this Court cannot convert itself into the Court of a Magistrate or a Sessions Judge to consider whether there is evidence or not justifying the framing of the charge.

29. In the result, this application has no merit and, accordingly, it is dismissed.

30. Before parting with this order/judgment, I will, however, set it down by way of caution that the court below while assessing the evidence and recording its findings on its basis with regard to proof or otherwise of the factual ingredients of the offences with which the accused may stand charged, shall not allow itself to be unduly influenced by anything said in this order/judgment in regard to the merits of the case.