

(2015) 03 AHC CK 0037

In the Allahabad High Court

Case No : Application U/S 482 No. 6425 of 2015

Vivek Jaisawal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 226, 227, 228, 245(2), 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 406, 417, 419, 420, 504

Citation : (2015) 03 AHC CK 0037

Hon'ble Judges : Karuna Nand Bajpayee, J.

Bench : Single Bench

Advocate : Satish Chandra Jaisawal, for the Appellant

Final Decision : Disposed off

Judgement

Karuna Nand Bajpayee, J.—This application u/s. 482 Cr.P.C. has been filed against the order dated 11.2.2015 passed by Addl. Chief Judicial Magistrate, Court No. 1, Deoria in Complaint Case No. 2307 of 2011 under Sections 406, 504, 506, 417, 419, 420 IPC., and 3/4 D.P. Act, P.S. Salempur, District Deoria whereby the application filed u/s. 245(2) Cr. P.C. has been rejected.

2. Heard applicants' counsel as well as learned A.G.A.

3. Entire record has been perused.

4. It is pertinent to mention here that the applicants had earlier filed an Application U/s. 482 No. 312225 of 2012 before this Court. From the perusal of the record, it appears that this Court while granting interim protection to the applicants on 10.4.2012 had directed the applicants to move an application seeking discharge before the court concerned through their counsel within 30 days. In pursuance of the said order, the applicants had filed a discharge application before the court below but the same has been dismissed by the order dated 11.2.2015. Against the said order, the applicants filed a criminal revision

before the Sessions Judge which too has been dismissed by the revisional court.

5. All the contentions raised by the applicants' counsel relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by the learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded.

6. Before proceeding to adjudge the validity of the impugned order it may be useful to cast a fleeting glance to some of the representative cases decided by the Hon'ble Supreme Court which have expatiated upon the legal approach to be adopted at the time of framing of the charge or at the time of deciding whether the accused ought to be discharged. It shall be advantageous to refer to the observations made by the Hon'ble Apex Court in the case of State of Bihar Vs. Ramesh Singh, which are as follows:--

"4. Under 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 u/s. 228 of the Code. If "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", so enjoined by s. 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which

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(b) in exclusively triable by the court, he shall frame in writing a charge against the accused," as provided in S. 228."

7. 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 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 this stage of deciding the matter under s. 227 and 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. 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, if any, cannot show that the accused committed the offence, 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.

8. Aforesaid case was again referred to in another Apex Court's decision *Superintendent and Remembrancer of Legal Affairs, West Bengal Versus Anil Kumar Bhunja* AIR 1980 (SC) 52 and the Apex Court proceeded to observe as follows:

"18. 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 Vs. 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." 9. In yet another case of *Palwinder Singh Vs. Balwinder Singh and Others*, the Apex Court had the occasion to reflect upon the scope of adjudication and its ambit at the time of framing of the charge and also about the scope to consider the material produced by the accused at that stage. Following extract may be profitably quoted to clarify the situation:

"12. Having heard learned counsel for the parties, we are of the opinion that the

High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can be framed also on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in *State of Orissa Vs. Debendra Nath Padhi*, wherein it was held as under:

"23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. *Satish Mehra's Case* holding that the trial Court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided." 10. The following observations made by the Hon'ble Supreme Court in the case of *Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others*, also reiterated the same position of law:--

"10. After analyzing the terminology used in the three pairs of sections it was held that despite the differences there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of a *prima facie* case to be applied.

11. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the Court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed."

11. In fact while exercising the inherent jurisdiction under Section 482 Cr.P.C. or while wielding the powers under Section 226 of the Constitution of India the quashing of the complaint can be done only if it does not disclose any offence or if there is any legal bar which prohibits the proceedings on its basis. The Apex Court decisions in *R.P. Kapur Vs. The State of Punjab*, and *State of Haryana v. Bhajan Lal* 1992 SCC(Cr.) 426 make the position of law in this regard clear recognizing certain categories by way of illustration which may justify the quashing of a complaint or charge sheet.

12. In fact the scope to discharge the accused u/s. 245(2) Cr.P.C. is extremely limited. There are only exceptional circumstances which may justify such discharge after passing of the summoning order without any further evidence of such a nature being produced which may completely absolve or exonerate the accused and the charge against them may appear to be groundless. There may also be such circumstances which may be brought to the notice of the court like the absence of legally required sanction or any such legal embargo which

prohibits the continuation of proceedings against accused. Ordinarily it is indeed very hard to succeed in obtaining a discharge successfully on the basis of same set of evidence which was found sufficient by the court for the purpose of summoning the accused to face the trial but because the possibility, however limited it be, does exist to get a discharge even without recording any evidence after summoning that the applications u/s. 245(2) Cr.P.C. are moved and are, as they should be, entertained by the courts.

13. Illumined by the case law referred to herein above, this Court has adverted to the entire record of the case.

14. The submissions made by the applicants' counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the complaint, the summoning order and also all other the material available on record makes out a prima facie case against the accused at this stage and this Court does not find any justifiable ground to set aside the impugned order refusing the discharge of the accused. This court has not been able to persuade itself to hold that no case against the accused has been made out or to hold that the charge is groundless.

15. The prayer for quashing or setting aside the impugned order is refused as I do not see any illegality, impropriety and incorrectness in the impugned order or the proceedings under challenge. There is absolutely no abuse of court's process perceptible in the same. The present matter also does not fall in any of the categories recognized by the Supreme Court which might justify interference by this Court in order to upset or quash them.

16. However, a request has been made by the counsel that as it is being desired by the accused to obtain bail after surrendering in the court below, a protective direction may be issued to the lower court to decide the proposed bail application on the same day in the light of the law laid down in Full Bench decision of *Amarawati and others v. State of U.P.* 2004(57), ALR 290.

17. It may be observed that the law regarding the hearing of bail applications on the same day and all its related aspects have been comprehensively dealt with in the aforesaid Full Bench decision of *Amarawati and others v. State of U.P.* 2004(57), ALR 290 relied upon by the counsel which was also approved by the Hon'ble Supreme Court in the case of *Lal Kamendra Pratap Singh Vs. State of U.P. and Others*, . All the courts must endeavour to decide the bail applications on the same day in suitable cases, if it is possible for them to do so depending

upon the peculiar facts and circumstances of the case in question. This is a matter of lower court's discretion which they must exercise judiciously in appropriate cases.

18. Above mentioned Full Bench decision of this Court and the decision of Hon"ble Apex Court are binding on the lower courts. They must be followed in letter and spirit. There is no need to pass separate orders in this regard.

19. However, in the peculiar facts and circumstances of the case it may be observed that if after surrendering in the court below an application for bail is moved on behalf of the accused within three months from today, the same shall be decided in accordance with law as has been laid down in aforementioned cases.

20. No coercive measures shall be taken or given effect to in the aforesaid period or till the date of appearance of the accused in the court below, whichever is earlier.

21. It is made clear that no application for extension of time shall be entertained if this order is not availed by the accused in the stipulated period of time.

22. It is further clarified that for the present this order has been passed only with regard to the accused on behalf of whom this application u/s. 482 Cr.P.C. has been moved in this Court.

23. With the aforesaid observations this application is finally disposed off.