

(2016) 08 GUJ CK 0052

In the Gujarat High Court

Case No : Criminal Revision Application (Against order passed by Subordinate Court) No. 339 of 2015

Yunusbhai Kadarbhai Saji

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, Section 392, Section 452

Citation : (2017) 173 AIC 309 : (2017) 1 GLR 397

Hon'ble Judges : Mr. S.G. Shah, J.

Bench : Single Bench

Advocate : Dhvani P. Lakhani, Mr. P.M. Lakhani, Mrs. R. P. Lakhani, Advocates, for the Applicant Nos. 1 to 5; Mr. KP Raval, APP, for the Respondent No. 1; Mr. Vijay H. Nangesh, for the Respondent No. 2

Final Decision : Partly Allowed

Judgement

Mr. S.G. Shah, J.—Rule. Service of rule is waived by Ld. APP Mr. Raval for respondent no. 1 and Mr. Vijay Nangesh, Ld. Advocate for respondent no. 2.

2. Heard. Ld. Advocate Mr. PM Lakhani for the petitioners, Ld. APP Mr. Raval for respondent no. 1 and Mr. Vijay Nangesh, Ld. Advocate for respondent no. 2 and perused the record.

3. The petitioners herein are accused in Sessions Case No. 180/2014. They have challenged the order dated 26/6/2015 passed below application exh. 3 in such Sessions Case wherein they are facing charges under sections 392, 366 and 452 of the Indian Penal Code [IPC]. One another complaint was filed by them under sections 326, 323, 504, 514[2] and 114. It is undisputed fact that the daughter of Salimbhai, who has committed suicide, had married to present petitioner no. 2 and there was matrimonial dispute between them, therefore, the daughter of Salimbhai, namely Samim, has filed application for maintenance. Said Salimbhai committed suicide contending that false complaint was filed by the petitioner no. 4 against him. Upon FIR by the sister of the victim, police has, after

investigation, filed charge-sheet against present petitioners. Thereupon, the petitioners have filed an application at exh. 3 for discharge, which was dismissed by the impugned judgment.

4. Though the law relating to discharging the accused is now well settled, in the present case, it is evident that in para 3 of the impugned judgment, the Sessions Court has referred one note alleged to be recovered from the pocket of the pant of Salimbhai, who has committed suicide. Such note was for the first time produced by the Ld. APP before the Court during the argument of discharge application without providing its copy to the petitioners - accused. Therefore, the basic contention of learned advocate Mr. Lakhani is quite clear and obvious that if any document, which is not part of the charge-sheet and if it is permitted to be produced on record during the hearing of the discharge application, then copy of such document must be provided to the accused so as to enable them to submit their case after scrutiny and study of such document. Whereas, the Sessions Judge has failed to follow such basic rule of criminal jurisprudence and decide the discharge application against accused persons without providing them copy of document, which is produced only at the time of hearing of discharge application.

5. Otherwise also it seems that the Sessions Court has purely relied upon the matrimonial dispute between the parties without realizing that abetment to suicide is sine qua non to frame charge in such cases and thereby, in absence of any evidence to prove abetment to commit suicide by the present petitioners, charge cannot be framed against the petitioners. However, at this stage, when document relied upon by the Sessions Court is not available to the accused, so also to the Ld. APP and thereby this Court is not able to scrutinize such document, it would be appropriate to remand the matter to the Sessions Court for deciding it afresh after providing copy of the document, which is referred in para 3 of the impugned judgment, to the accused - petitioners and to decide the application afresh in accordance with law, but relying upon the basic principles to verify that whether ingredients of section 306 are available or not.

6. Before discussing the factual details of the case, let us recollect the settled legal position so far as provision of discharge is concerned. It is certain that there must be a very strong suspicion to form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and thereby prima-facie sufficient ground to sustain the charge, for framing the charges so as to start the trial against the accused persons. It is also well settled that while framing the charge or while considering the request for discharge, inquiry must necessarily be limited to decide if the facts emerged from such material which constitute the offence for which the accused could be charged. At such stage, the Court may peruse the record for that limited purpose, but it is not required to marshal the evidence with a view to decide the reliability thereof. Thereby the Court has to consider the material at such stage only with a view to find out if there is a ground for presuming that accused has committed an offence or that there is no ground to prosecute him. Thereby, the Court has to sift the evidence,

as it cannot be expected even at initial stage to accept all the prosecution story as gospel truth and even if it is opposed to common sense or the broad probabilities of the case, the Court has to consider the material with a view to find out that whether there is any ground to presume that the accused has committed the offence or that there is no ground for proceeding against him.

7. Therefore, before framing the charge the Court must apply its judicial mind on the material placed on record and must be satisfied with the commitment of offence by the accused was possible.

8. Though there may be proof of commission of any offence, since there is no categorical and specific evidence in the charge sheet, which can even prima-facie show the involvement of the petitioner - accused in commission of such offence, there is no reason to ask the petitioner to face the trial for couple of years. If at all it is so allowed, practically it would help the original culprit to get free from trial and punishment, because the entire machinery will unnecessarily waste their energy, to prove the case against the present petitioner, even in absence of any prima-facie evidence against him.

9. Therefore, though it is certain that any accused cannot be discharged if there is any prima-facie evidence against him, it is also certain that thereby presence of minimum and prima-facie evidence is must to frame charge and, therefore, there is provision regarding discharge of accused in Cr. P.C. that in absence of prima-facie evidence against any person, the Court may discharge such person from the alleged offences.

10. In view of above facts and circumstances, the revision application is partly allowed. Thereby impugned order dated 26/6/2015 passed below exh. 3 in Sessions Case No. 180/2014 is quashed and set aside and the matter is remanded to the Sessions Court to decide application exh. 3 afresh after providing the copy of all relevant documents to the accused and purely in accordance with law and with reference to discussion herein above as well as in the judgments rendered in the following cases.

[1] AIR 1997 S.C. 2041: State of Maharashtra v. Priya Sharan Maharaj

[2] AIR 2000 SC 665 = 2000 SCC(2) 57 : State of MP v. SB Johari

[3] 2005 SC 359: State of Orissa v. Debendra Nath Padhi

[4] (1997) 4 SCC 393 = 1997 AIR SCW 1833: State of Maharashtra v. Priya Sharan Maharaj

[5] AIR 2007 SC 2149 = 2007 AIR SCW 3683 - Soma Chakravarty v. State

[6] AIR 2012 SC 1890 - General Officer Commanding v. CBI

[7] AIR 2009 SC Supplimentary 1744 - State of M.P. v. Sheetla Sahai.

In the result, the revision application is partly allowed. Rule is made absolute to the aforesaid extent.