

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 3906/2011

Judgment delivered on: 31.05.2013

SARITA ARORA

..... Petitioner

Through: Mr.Mohd. Irfan, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Navin Sharma, APP for the
State

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. By this writ petition filed under Article 226 of the Constitution of India the petitioner seeks to challenge the order dated 10.3.2011 passed by the learned Metropolitan Magistrate whereby the learned Metropolitan Magistrate framed the charge against the petitioner under Section 411/482/34 IPC and order dated 25.7.2011 passed by the learned Additional Sessions Judge whereby the learned Additional Sessions Judge upheld the order of charge passed by the learned Metropolitan Magistrate.

2. Arguing the present petition Mr.Mohd. Irfan, counsel appearing for

the petitioner submitted that the petitioner has been falsely implicated in the present case even after the investigation against her had stopped based on the closure report filed by the U.P. police in the case No. 352/2008 bearing FIR No. 118/2008 registered under Sections 420/467/471/411/34 IPC. Contention raised by counsel for the petitioner is that the petitioner had placed on record before the Trial Court as well as Revisional Court the said closure report of the U.P. police, but both the said Courts failed to consider the said closure report. Counsel further submitted that the petitioner was not apprehended or arrested from the spot and in fact the U.P. police on verification found the petitioner present in G.S.B.A. College, Noida where the petitioner had gone to meet her son, who is a student of the said college. Counsel also submitted that the concerned I.O. of U.P. police had collected the photocopy of the relevant page No. 175 of the visitor's register of G.S.B.A. college vide seizure memo, which recorded the arrival and departure entry of the petitioner and which fact clearly establishes that the petitioner had gone to meet her son at the said college at the relevant time of interception of the said car. Counsel further submitted that I.O. of the U.P. police had also taken sample of handwriting and the signatures of the

petitioner on the visitor's register of the said college for sending the same for comparison to the FSL Agra, U.P. and as per the FSL report, Agra U.P. the sample of the handwriting of the petitioner tallied with that in the visitor's register of the said college. Counsel also submitted that there is no other evidence available with the Delhi Police for prosecuting the present petitioner in the present case except the alleged presence of the petitioner in the stolen car, which was not found to be true by the U.P. Police after the necessary verification was made by the U.P. police and based on which the U.P. police filed the closure report. Counsel also submitted that the Trial Court can look into the defence material placed on record even at the stage of framing of charges in very rare and exceptional circumstances when such defence material shown to the Trial Court convincingly demonstrates that the prosecution version is totally absurd or preposterous. In support of his arguments counsel for the petitioner placed reliance on the case of *Rukmini Narvekar v. Vijaya Satardekar & Ors.* reported in *2008 (4) JCC 2879*. Counsel also submitted that both the Courts below had placed reliance on the judgment in the case of *State of Orissa v. Debendra Nath Padhi* reported in *AIR 2005 SC 359*, but failed to take note of the *Rukmini's*

case, which is fairly applicable to the facts of the present case.

3. The present petition has been opposed by Mr. Navin Sharma, APP for the State. Mr. Sharma submitted that both the Courts below rightly placed reliance on the judgment of Apex Court in *State of Orissa v. Debendra Nath Padhi (Supra)* as the said judgment is given by a larger Bench of three Judges while the judgment in the case of *Rukmini Narvekar (supra)* is given by a Bench of two Judges. Counsel also submitted that the petitioner has taken a plea of alibi by showing her presence in the said college at the time when stolen car was intercepted by the police. Counsel also submitted that the case registered against the petitioner in the present FIR is under Sections 411 and 482 IPC while the petitioner was charged under different sections in the FIR lodged against him by the U.P. police. Counsel also submitted that the defence of alibi cannot be appreciated by the Court at the stage of framing of charges and such defence can only be appreciated by the Trial Court during the trial of the case.

4. I have heard the counsel for the parties.

5. The present petition has been preferred by the accused under Article 226 of the Constitution for setting aside of the orders dated 10.3.2011 and

25.7.2011 passed by the lower courts which did not find it appropriate to consider the defence evidence of the accused at the time of framing of charges. The whole controversy in the present case thus revolves around the issue whether the defence evidence advanced by the accused can be appreciated by the Court at the time of framing of charges against the accused.

6. The State has placed reliance on a three-judge bench decision of the Apex court in *State Of Orissa v. Debendra Nath Padhai, (supra)* in support of its argument that the defence evidence cannot be looked into at all while framing of charges against the accused. On the other hand, defence counsel has placed reliance on a two-judge bench decision of the Apex Court in *Rukmini Narvekar v. Vijaya Satardekar & Ors.* reported in **2008 (4) JCC 2879** in support of his argument that defence evidence can be considered in very rare cases where the prosecution version appears to be absurd or preposterous.

7. It is a settled law that in case of a conflict between the decision of a larger bench with that of a smaller bench, it would not be appropriate to proceed on the opinion expressed by a smaller bench. Observing that a

Bench of lesser quorum cannot doubt correctness of view of law taken by a Bench of larger quorum, the constitutional bench of the Apex Court in *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr.*, 2005 1 AD (SC) 228, summed up the legal position in that respect, as under

- (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.*
- (2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.*
- (3) The above rules are subject to two exceptions:*

- (i) *The above said rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and*
- (ii) *In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghbir Singh & Ors. and Hansoli Devi & Ors.(supra).*

8. Accordingly, the judgment of Supreme Court in *Debendra Nath's* case ought to be followed since it is the law of the land in view of doctrine of 'binding precedent' regardless of the contrary pronouncement made by a smaller bench of the Supreme Court in the case of *Rukmini (supra)*.

9. Be that as it may, I go by the reasoning as articulated in the ***Debendra Nath's*** case logically also. Reason being, that if the law as enunciated in ***Rukmini's Case*** is accepted as the correct law, then there would be more chances of misapplication of such law than its proper use. For better appreciation of this opinion of mine, the operative para of ***Rukmini's case*** is reproduced as under

“18. ... it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. ... in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.”

10. The Apex Court in the above case has not defined the ambit of the term ‘very rare cases’. Such vague term used by the Division Bench of the Apex Court may lead to the misuse of this interpretation. Every defending party would seek to prove its case to be falling in the category of a ‘very rare

case’ and such a practice would prolong the litigation unnecessarily.

11. Also, considering the defence evidence of the accused at the stage of framing of charges would lead to conducting of a mini trial at such an initial stage of the case. It has been rightly observed in *Debendra Nath’s* case, that

“18. ... If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by

Section [227](#) is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.”

12. The issue of controversy is also set at rest by the observations made in a recent judgment of the Apex Court in *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460. Giving a list of principles to be kept in mind while dealing with an application for quashing of charges against the accused, the Apex Court observed that

“12) In exercise of its jurisdiction under Section [228](#) and/or under Section [482](#), the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.”

13. Thus, the defence evidence of the accused cannot be looked into and

considered by the learned trial court at the time of framing of charges against him. Consequently, the petition filed by the petitioner challenging the order dated 10.3.2011 passed by the learned Metropolitan Magistrate whereby the learned Metropolitan Magistrate framed the charge against the petitioner under Section 411/482/34 IPC and order dated 25.7.2011 passed by the learned Additional Sessions Judge whereby the learned Additional Sessions Judge upheld the order of charge passed by the learned Metropolitan Magistrate stands dismissed.

14. It is ordered accordingly.

KAILASH GAMBHIR J.

MAY 31, 2013