

Neutral Citation No. - 2023:AHC:208343

Reserved

A.F.R.

Court No. - 28

Case :- CRIMINAL APPEAL No. - 7437 of 2023

Appellant :- Raees And 5 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sanjay Singh

Counsel for Respondent :- G.A.,Girish Tiwari

Hon'ble Surendra Singh-I,J.

Heard Sri Sanjay Singh, learned counsel for the appellants, Sri Girish Tiwari, learned counsel for the respondent no. 2 and learned A.G.A. for the State.

2. This criminal appeal has been filed u/s 14-A(1) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989, against order dated 01.05.2023 passed by Special Judge (SC/ST) (PA) Act, Rampur. By the impugned order, the trial court has rejected the discharge application u/s 227 Cr.P.C. filed by the appellants-accused.

3. It has been submitted by learned counsel for the appellants that by passing the impugned judgement and order, the trial court has committed a manifest error and has not considered the documentary and oral evidence filed with the charge-sheet and the arguments advanced on behalf of the appellants-accused. It has also been submitted that since no amount of money has been transferred in the account of appellants-accused nor any fraudulent or dishonest inducement has been made by them, therefore, offence u/s 406 or 420 I.P.C. is not made out. It has also been submitted that the appellants are illiterate persons and they had no knowledge about the caste of the informant/respondent no. 2, Smt. Geeta Katariya, therefore, no offence u/s 3(1)(r), 3(1)(s) of SC/ST (PA) Act (hereinafter referred to as the 'Act No. 33 of 1989') against them is made out. It has also been submitted that there is no medical report regarding the injury report received by

respondent no. 2 or any of her companion in the occurrence. Therefore, offence u/s 323 I.P.C. is not made out.

4. Per contra, learned A.G.A. for the State and learned counsel for respondent no. 2/informant have opposed the appeal and have stated that considering the averments made in the first information report and the statements of the witnesses recorded u/s 161 Cr.P.C. as well as documents produced with the charge, there is sufficient ground to frame charge against the appellants-accused.

5. The trial court directed to frame charges against the appellant-accused, Raees, in Special Case No. 30 of 2022, State of U.P. Vs. Raees and others arising out of Case Crime No. 18 of 2022 u/s 147, 420, 406, 342, 323, 504, 506 I.P.C. and 3(1)(r), 3(1)(s) of Act No. 33 of 1989 and against appellants-accused, Jamshed, Smt. Priya, Smt. Parmeen, Anjum, Afsar Hussain u/s 147, 342, 323, 504, 506 I.P.C. and 3(1)(r), 3(1)(s) of Act No. 33 of 1989, Police Station- Azeem Nagar, District- Rampur.

6. The prosecution case in brief is that informant, Smt. Geeta Katariya, wife of Tekchand Katariya, resident of village- Krishna Nagar, Badapur, District- Bijnor, submitted a written report on 20.01.2022 at concerned police station to the effect that she is engaged in the business of property dealing. In 2017, appellant-accused, Raees along with Islam son of Asgar visited her residence and on the pretext that he needed money for the marriage of his sister, offered to sell his 7 *bigha* land situated in Aliganj. The bargain for the purchase of the land was settled for 15 lakhs per *bigha*. The informant paid Rs.1,00,000/- through her colleague, Kamran Khan. After 3-4 days, on the request of accused, Raees, he paid Raees money to purchase the vehicle, Bolero. The informant got Bolero purchased from Haldwani, payment whereof amounting to Rs.4 lakhs was made by Naved Khan from his account, two lakhs by Kamran Khan through ATM machine in the account of Mahindra Company and Rs.2,50,000/- was paid by Kamran Khan in cash. Thereafter, after 10-15 days, appellant-accused, Raees came with Islam and took Rs.1,10,000/- from the informant. On different dates on the direction of the informant, Shakhawat Hussain son of Fida Hussain and

Nikhil Kumar Sharma alias Deepu son of Shiv Shankar Sharma paid Rs.2,00,000/-, Shakhawat Hussain aforesaid and Vilayat Hussain son of Fida Hussain paid Rs.3,00,000/- and by Vilayat Hussain aforesaid paid Rs.4,00,000/- to appellant-accused, Raees in the presence of Islam. Thus, she paid a total of about Rs.17,10,000/- to appellant-accused, Raees. Later on, it was transpired that the alleged property was not in the name of appellant-accused, Raees but in the name of his mother. The adjoining property was in the name of appellant-accused, Raees. The informant asked on different dates to appellant-accused, Raees to transfer his property in lieu of money paid by her but he procrastinated on one or the other pretext. The informant was engrossed in the medical treatment of her ailing husband for about one year. On 09.11.2021, she met appellant-accused, Raees at his residence with her husband and requested him to pay the money back. Raees alongwith co-accused, Jamshed, Smt. Priya, Smt. Parmeen and two other unknown persons started hurling abuses and derogatory words against her about her being a member of SC community and threatened her to kill in presence of Mehmood Ali Khan and Asif. They started beating her with kicks and fists and threatened to kill her. They also confined her and husband in their house. Then, her husband saved her with the help of Mehmood Ali Khan and Asif, who were present on the spot. On the basis of her written report, first information report was lodged on 20.01.2022 at 18:05 o'clock. After investigation, charge-sheet against the appellant-accused, Raees u/s 147, 420, 406, 342, 323, 504, 506 I.P.C. and 3(1)(r), 3(1)(s) of Act No. 33 of 1989 and against appellants-accused, Jamshed, Smt. Priya, Smt. Parmeen, Anjum, Afsar Hussain u/s 147, 342, 323, 504, 506 I.P.C. and 3(1)(r), 3(1)(s) of Act No. 33 of 1989, was submitted in the court.

7. The statutory provisions regarding framing of charge in SC/ST cases is provided u/s 227 and 228 Cr.P.C. which is as follows :-

227. Discharge - *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, 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.*

228. 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. It is clear that the concerned Judge has to consider the statements u/s 161 Cr.P.C. mentioned in the case diary and all other documents submitted along with case diary and hear the arguments of learned counsel for the State and learned counsel for the defence/accused and if he finds that there is “*no fresh ground*” (emphasis supplied) for proceeding against the accused, he shall discharge the accused by recording reasons. If after such consideration and hearing as mentioned in Section 227 Cr.P.C., if the Judge is of the opinion that “*there is ground for presuming*” (emphasis supplied) that the accused has committed an offence, he will frame the charge against the accused in writing and proceed with the trial.

9. In **Union of India Vs. Prafulla Kumar Samal, 1989 (3) SCC 4**, the scope of Section 227 Cr.P.C. was considered. After adverting to various decisions, the Apex Court has enumerated the following principles in paragraph no. 10 of the judgement :

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift 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 under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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 does 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 a trial.

10. In the case of **Dilawar Balu Kurane Vs. State of Maharashtra, (2002) 2 SCC 135**, the principle enunciated in **Prafulla Kumar Samal (supra)** have been reiterated in paragraph nos. 12 and 14 :

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift 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; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]).

14. We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven

days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant.

11. In the case of **Sajjan Kumar Vs. Central Bureau of Investigation, (2010) 9 SCC 368**, on considering the various authorities about the scope of Section 227 and 228 Cr.P.C., the Apex Court laid down following principles in paragraph 21 of the judgement :-

21. *On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged

offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

12. In the case of **Dipakbhai Jagdishchandra Patel Vs. State of Gujarat, (2019) 16 SCC 547**, the Apex Court in paragraph nos. 15 and 23 of its judgement has elaborately laid down the law relating to the framing of the charge and discharge which is as follows :-

15. We may profitably, in this regard, refer to the judgment of this Court in [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018] wherein this Court has laid down the principles relating to framing of charge and discharge as follows: (SCC pp. 41-42, para 4)

"4. ... Reading Sections 227 and 228 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 the stage of deciding the matter under Section 227 or Section 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 evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. ... 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 Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

13. Now, in the light of the above law laid down by the Apex Court, it has to be seen whether in the present case, there is sufficient ground to frame charge against the accused.

14. In the first information report, the informant has mentioned that the appellant-accused, Raees offered the informant to sell his 7 *bigha* land on the pretext that he needed money for marriage of her sister. As a consideration for selling the land, appellant-accused, Raees on different

dates, obtained money in cash and through bank transfer from the informant as well as on her direction from her colleagues totalling Rs.17,10,000/-. On the repeated requests of the informant/respondent no.2 to execute sale deed of the land in her name, he procrastinated on one or the other pretext. It was later found that the land proposed for sale was in the name of mother of appellant-accused, Raees. The accuseds' own land was situated adjacent to her mother's law. When the informant visited Raees's house with her husband, Tekchand Kataria, and requested him to pay the money back, Raees along with co-accused, Jamshed, Smt. Priya, Smt. Parmeen and two other unknown persons hurled abuses and derogatory words against her about her being a member of SC community and beat her with kicks and fists and threatened to kill her. They also confined her and husband in the house. Then, Mehmud Ali Khan and Asif, who were present on the spot, saved her with the help of her husband.

15. Following ingredients are required for the offence of criminal breach of trust punishable u/s 406 I.P.C. :-

- (1) Entrusting any person with property or with any dominion over property;
- (2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or
- (3) Dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation
 - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
 - (ii) of any legal contract made touching the discharge of such trust.

This offence consists of any one of four positive acts, namely, misappropriation, conversion, user, or disposal of property. Neither failure to account for breach of contract, however dishonest, is actually and by itself the offence of criminal breach of trust.

16. In the present case, no entrustment of any property or with any dominion over property was given to the accused persons though there is

allegation of misappropriation of money of informant by the appellant-accused, Raees but that money was not entrusted to him by the informant but it was paid to the appellant-accused, Raees for the execution of sale deed of the land. Thus, there is no ground for framing of charge u/s 406 I.P.C. against appellant-accused, Raees.

17. In her statement recorded u/s 161 Cr.P.C., the informant has supported the averments made by her in the written report. In his statement recorded u/s 161 Cr.P.C, eye-witness, Mehmud Ali Khan has corroborated the statement of informant, Smt. Geeta Katariya. The prosecution witnesses, Kamran Khan son of Isteyak Khan, Nanhe son of Manga, Ismail son of Fakir and Bilal son of Nisar Hussain have also supported the prosecution case.

18. In the light of the aforesaid Apex Court judgements and from perusal of the first information report and the statements of informant and aforesaid witnesses recorded u/s 161 Cr.P.C., it is clear that, prima facie, through fraudulent and dishonest inducement, appellant-accused, Raees caused informant, Smt. Geeta Katariya to pay him Rs.17,10,000/- as price of land which was not in his name and notwithstanding the repeated requests of the informant, he did not transfer his land in favour of the informant although he had obtained full payment for the land. Prima facie, there is sufficient evidence that when informant with her husband and companions/witnesses visited the house of appellant-accused, Raees and other appellants, they hurled abuses and derogatory words against the informant regarding her caste and they beat them with kicks and fists. They also threatened her to kill with intent to raise alarm to her.

19. On the basis of evidence on record, the trial court has rightly rejected the discharge application of the appellant-accused, Raees and directed framing of charges against him u/s 147, 420, 342, 323, 504, 506 I.P.C. and 3(1)(r), 3(1)(s) of Act No. 33 of 1989 but there is no ground to frame charge u/s 406 I.P.C. against appellant-accused, Raees.

20. The trial court has rightly rejected the discharge application of the appellants-accused, Jamshed, Smt. Priya, Smt. Parmeen, Anjum, Afsar

Hussain and directed framing of charges against them u/s 147, 342, 323, 504, 506 I.P.C. and 3(1)(r), 3(1)(s) of Act No. 33 of 1989.

21. From the above discussion, it is clear that except the order regarding framing of charge u/s 406 I.P.C. against the appellant-accused, Raees, there is no illegality, irregularity or impropriety in the impugned order passed by the trial court.

22. Subject to aforesaid modification regarding framing of charge u/s 406 I.P.C. against the appellant-accused, Raees, there is no force in the appeal.

23. Accordingly, the appeal is **allowed in part**.

24. A copy of this judgment be sent back immediately to District Court concerned for compliance and further necessary action.

Order Date :- 31.10.2023

KS