

Court No. - 93

Case :- APPLICATION U/S 482 No. - 36716 of 2014

Applicant :- Paramjeet Bhatia

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Gaurav Kakkar

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Gaurav Kakkar, learned counsel for the applicant, Sri. Tulsi Mishra, learned A.G.A. for the Stat and perused the record.

2. Present application under Section 482 Cr.P.C. has been filed for quashing of the order dated 16.06.2014, passed by 1st Additional Chief Judicial Magistrate, Gautam Budh Nagar by means of which charge has been framed against the applicant under Section 507 IPC in Criminal Case No. 636 of 2013, arising out of Case Crime No. 660 of 2013, Police Station Sector-24 Noida, District-Gautam Budh Nagar, pending in the Court of learned 1st Additional Chief Judicial Magistrate, Gautam Budh Nagar.

3. Learned counsel for the applicant submits that the applicant is not named in the F.I.R., and during the investigation, his name came to light on the basis of the statement of co-accused Pawan Gujar. In which Pawan Gujar has stated that the present applicant is also involved with co-accused persons. It was also mentioned in the fard recovery and arrest memo that after the arrest, the applicant stated to police that on persuasion of co-accused Pawan Gujar he had called Dr. Vinay Bhatt through PCO to demand money. It is further submitted that there was no recovery from the applicant, and there is no evidence which shows that in any manner, the applicant had sent any letter or any other communication to intimidate the victim. It is lastly submitted by learned counsel for the applicant even if the entire allegations in the statement of co-accused persons are taken as true on its face value, even then, no case under section 503 or 507 IPC is made out.

4. After hearing learned counsel for the parties and also on perusal of the record, this Court finds that the only evidence against the

applicant, which is the basis of framing the charge, is the statement of co-accused Pawan Gujar in which he had stated that the present applicant also involved in this offence. However, there is no other evidence which could connect the applicant that he made any call to the victim or had sent any letter or any communication to the victim to extract money. For making out of offence under Section 507 IPC, there must be criminal intimidation by an anonymous communication or other mode from whom the threat comes, but in the present case, admittedly there is no evidence that the applicant had sent any anonymous communication. Section 507 IPC is being quoted as below:-

"Section 507. Criminal intimidation by an anonymous communication.—Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section."

5. The Hon'ble Apex Court already settled legal position in the judgment of ***State of Andhra Pradesh vs Golconda Linga Swamy And Anr; (2004) 6 SCC 522*** that at the time of framing the charges u/s. 228 or 240 Cr.P.C., only the material collected during the investigation is to be seen and that material must show possibility about the commission of crime as against certainty. Paragraph No. 10 of this judgment is being quoted as under:-

"10. In all these cases there was either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in R.P. Kapoor and Bhajan Lal cases (supra)."

6. Similarly in the judgment of ***Bharat Parikh Vs. Central Bureau of Investigation And Anr; (2008) 10 SCC 109*** the Hon'ble Apex Court observed that while invoking the power under Section 482 Cr.P.C. for quashing the charges framed one thing should be kept in mind that at this stage, roving and fishing inquiry is impermissible, and submissions on behalf of accused have to be confined to material produced by the Investigating Agency.

Paragraphs Nos. 18 and 19 of the judgment of **Bharat Parikh Vs. Central Bureau of Investigation And Anr (Supra)** is being reproduced as under:-

"18. With regard to the second proposition regarding the High Court's powers to look into materials produced on behalf of or at the instance of the accused for the purpose of invoking its powers under Section 482 of the Code for quashing the charges framed, it has to be kept in mind that after the stage of framing charge evidence has to be led on behalf of the prosecution to prove the charge if an accused pleads not guilty to the charge and/or charges and claims to be tried. It is only in the exceptional circumstances enumerated in State of Haryana v. Bhajan Lal that a criminal proceeding may be quashed to secure the ends of justice, but such a stage will come only after evidence is led, particularly when the prosecution had produced sufficient material for charges to be framed.

19. As observed in Debendra Nath Padhi case at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused have to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to reopen the proceedings once charge has been framed or for invocation of the High Court's powers under Section 482 of the Code of Criminal Procedure."

7. The above legal position was again reiterated by the Hon'ble Apex Court in the judgment of **Mauvin Godinho vs The State Of Goa 2018(3) SCC 358**. Hon'ble Apex Court, in this case, observed that while framing the charges, the Court should apply a prima facie standard for making out the satisfaction that a prima facie case against the accused based on the probative value of the evidence as a whole to induce the Court to believe in the existence of facts pertaining to such essential elements. Paragraph No. 12 of the judgment of **Mauvin Godinho vs The State Of Goa (Supra)** is being quoted as below:-

"12. At the outset it would be pertinent to note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges under section [227](#) of the Code of Criminal Procedure, 1973 should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the Court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. 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. [Refer Sajjan Kumar v. CBI, 2010(4) RCR (Criminal) 382 : 2010(5) Recent Apex Judgments (R.A.J.)

350 : (2010) 9 SCC 368; *State v. A. Arun Kumar*, 2015(1) RCR (Criminal) 295 : 2015(1) Recent Apex Judgments (R.A.J.) 38 : (2015) 2 SCC 417; *State by the Inspector of Police, Chennai v. S. Selvi and Ors.*, 2018(1) RCR (Criminal) 625 : (2018) 1 SCALE 5.]”

8. Hon'ble Apex Court in the latest judgement of ***Dr. Nalla Reddy Sridhan Reddy Vs. State of Andra Pradesh and Others* (2020) 12 SCC 467** observed that for framing of charge, the Court needs to prima facie determination that sufficient material exists for the commencement of trial and veracity of deposition made by the witnesses is the question of trial. Para no. 25 of the judgment of ***Dr. Nalla Reddy Sridhan Reddy Vs. State of Andra Pradesh and Others* (Supra)** is being quoted as under:-

"25. The veracity of the depositions made by the witnesses is a question of trial and need not be determined at the time of framing of charge. Appreciation of evidence on merit is to be done by the Court only after the charges have been framed and the trial has commenced. However, for the purpose of framing of charges the Court needs to prima facie determine that there exists sufficient material for the commencement of trial. The High Court has relied upon the materials on record and concluded that the ingredients of the offences under sections 406 and 420 IPC are attracted. The High Court has spelt out the reasons that have necessitated the addition of the charge and hence, the impugned order does not warrant any interference."

9. From the legal position established as mentioned above it is clear at the time of framing charge u/s. 228 or 240 Cr.P.C. court has to see whether on the basis of material produced by the prosecution collected during the investigation prima facie case is made out against the accused. At this stage, the Court will not go into the correctness or veracity of the statement of witnesses, and for quashing the charges framed under section 482, Cr.P.C. Court has to look into guidelines of the Apex Court in State of ***Haryana Vs. Bhajan Lal* 1992 supplementary (SCC 335)**.

10. From the statement of witnesses recorded under section 161 Cr.P.C. as well as the statement of co-accused Pawan Kumar Gujar, recorded at the time of his arrest, there is no ingredients which could be said to be sufficient for a prima facie case against the applicant for framing charge under section 507 IPC. The mere statement of the applicant in police custody that he had called the victim on the persuasion of Pawan Gujar through P.C.O. to demand money is also not sufficient for framing the charge against the applicant under section 507 IPC. Therefore, this Court is of the view that there is no sufficient material which could persuade the Court to presume that the applicant has committed the offence, which is necessary for framing the charge against the applicant under section 507 IPC.

11. This Court perspicuously hold that the statement of the co-accused in police custody about the involvement of the applicant-accused, along with the confession of the applicant-accused to police during his detention without any other material connecting the applicant with crime is not sufficient material for framing charge under section 228 or 240 of Criminal procedure code.

12. In view of the above, order dated 16.06.2014, passed by 1st Additional Chief Judicial Magistrate, Gautam Budh Nagar by means of which charge has been framed against the applicant under Section 507 IPC in Criminal Case No. 636 of 2013, arising out of Case Crime No. 660 of 2013, Police Station Sector-24 Noida, District-Gautam Budh Nagar against the applicant under section 507 IPC is hereby quashed.

13. With the aforesaid observation, the present application is **allowed**.

Order Date :- 1.11.2023

Vikram