

Neutral Citation No. - 2023:AHC:211359

Reserved on 11.10.2023

Delivered on 03.11.2023

Court No. - 78

Case :- CRIMINAL REVISION No. - 4927 of 2023

Revisionist :- Rama Giri

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

Counsel for Revisionist :- Nikhil Kumar, Vijay Shankar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for the revisionist and learned A.G.A. for the State.

2. The present criminal revision has been preferred against the order dated 10.08.2023, passed by the Additional District & Sessions Judge/Special Judge (P.C. Act), Court No. 2, Varanasi in Special Trial No. 604 of 2022, crime No. 39/2002 under Sections 7 P.C. Act, P.S. Kotwali City, Mirjapur, District Mirjapur, whereby the application filed by the accused-revisionist under Section 227 Cr.P.C. for discharge has been rejected.

3. Learned counsel for the revisionist has submitted that the impugned order is against facts and law and thus, liable to be set aside. The revisionist has moved a discharge application before the trial court, which has been rejected by the trial court vide impugned order dated 10.08.2023, without considering the grounds mentioned in the application and without assigning any reason. Learned counsel submitted that while deciding the discharge application, it is incumbent upon the trial court to consider the grounds mentioned in the application and to assign reasons. In the instant matter, trial court has merely incorporated the version of discharge application and thereafter rejected the same without making proper discussion of the grounds and without assigning any reason and thus, the impugned order is liable to be set aside. In support of his contention, learned counsel placed reliance upon cases of **State of Karnataka Vs. L. Muniswamy** (1977) 2 SCC 699 and **Sanjeev Rawat @ Teetu and Another Vs. State of U.P. and Another** (Application U/S 482 No. 42148 of 2022, decided on 18.9.2023).

4. Learned AGA has opposed the revision and submitted that there is no illegality or perversity in the impugned order. There is sufficient evidence to show that the revisionist, while working as Lekhpal, has demanded illegal gratification and he was apprehended by a trap team while accepting the illegal gratification of Rs. 5,000/- and thus, a prima facie case is made for charge is made out. It was submitted that there is no illegality and perversity in the impugned order.

5. I have considered rival submissions and perused the record.

6. Chapter XVIII of Cr.P.C. deals with "Trial before a Court of Session". As per Section 226, when the accused person is brought before the Court in pursuance of a commitment of the case u/s 209, the prosecutor is required to open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove his guilt of the accused. Section 227 deals with discharge and it reads 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."

7. As per the aforesaid provision, upon consideration of the records of the case and the documents submitted before him and after hearing the submissions of the party accused and the prosecution if the Judge is of the opinion that no sufficient ground is made out to proceed against the accused, he is required to discharge the accused and record his reasons for doing so.

8. Section 228 relates to framing of charge as follows:

"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- 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 (or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report; 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." From sub Section (1) of Section 228, it is clear that after such consideration and hearing, as given under Section 227, if Judge forms an opinion that there is a ground for presuming that the accused has committed an offence, Judge may frame the charge(s). From Section 228 it is clear that no separate hearing is required to be given for framing the charge if the accused is not discharged upon consideration of the record of the case and documents and after hearing the submissions under Section 227."

9. It is well settled that at the stage of framing of charge or considering discharge application, the court is not to analyse reliability of the material on record. The evidentiary value and its credibility has to be considered at the stage of trial. Marshalling and appreciation of evidence is not in the domain of the court at that point of time. At the stage of consideration of an application for discharge, the court has to proceed with an assumption that the material brought on record by prosecution is true and such material and documents have to be considered with a view to find out whether the facts emerging from such material when taken at their face value disclose the existence of all the ingredients constituting the offence.

10. In case of **State of Karnataka Vs. L. Muniswamy** (supra), the Hon'ble Apex Court held as under:

"-Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:

"If, upon consideration of the record of the case and the documents submitted there- with, and after hearing the submissions of the accused and the prosecution in this be- half, 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."

This section is contained in Chapter XVIII called "Trial Before a Court of Sessions". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be re- corded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is of is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case.

It was further observed as under:

"As observed in the latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be. asked to face a trial. In Vadilal Panchal's case. (supra) section 203 of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint if after considering

certain matters mentioned in the section there was in his judgment no sufficient ground for proceeding with the case.. To art extent section 227 of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court, while considering the true scope of s. 203 of the old Code that the Magistrate. was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to form his judgment. These decisions show that for' the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which. it can determine the question whether the material on the record, if unrebutted, is such on the: basis of which a conviction can-be said reasonably to be possible.”

11. In case of case of **Sanjeev Rawat @ Teetu and Another** (supra), this Court discussed a number of pronouncements of the Apex Court and held:

“37. Now coming to this case. It is apparently clear that while deciding the discharge application trial Court has not followed the settled ratio of law laid down by the Apex Court as well as this Court. In fact, Court blindly relying upon the charge sheet submitted by I.O. rejected the discharge application and framed charges thereafter. As discussed herein-above, treating the allegation in FIR as well as statement recorded under Section 161 Cr.P.C. is correct, no case is made out under Sections 386 & 389 IPC, but trial Court functioning like a post office accepted the charge sheet and treating the version true, rejected the discharge application. Thereafter proceeded to frame charges also in the same sections. In fact, approach of trial Court suffers non application of judicial view settled by the Apex Court as well as different Courts. In a very casual manner vide impugned orders dated 23.11.2022 & 22.2.2023 discharge application has been rejected and charges have been framed, which cannot be sustained.”

12. The scope of Sections 227 and 228 Cr.P.C. was considered by the Apex Court in **Amit Kapoor v. Ramesh Chander and another**, (2012) 9 SCC 460 and held as follows:

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly.”

13. In **State of Bihar v. Ramesh Singh** [(1977) 4 SCC 39], considering the scope of Sections 227 and 228 of the Code, it was held that at the stage of framing of charge it is not obligatory for the Judge 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. 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, at the initial stage of framing of charge, is sufficient to frame the

charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused.

14. In **Superintendent and Remembrancer of legal Affairs, West Bengal v. Anil Kumar Bhunja & Ors** [(1980) 1 SCR 323], the Apex Court held that the Magistrate at the stage of framing charges had to see whether the facts alleged and sought to be proved by the prosecution prima facie disclose the commission of offence on general consideration of the materials placed before him by the investigating police officer.

15. In **State of Delhi v. Gyan Devi and Others** [(2000) 8 SCC 239], the Hon'ble Supreme Court reiterated that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons.

16. In **State of Maharashtra v. Priya Sharan Maharaj and Others** [(1997) 4 SCC 393] it was held that at Sections 227 and 228 Cr.P.C. stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, 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.

17. It is apparent from the above discussed decisions of Hon'ble Apex Court that at the stage of charge there can only be limited evaluation of materials and documents on record. At the stage of charge or consideration of an application for discharge, the court has to proceed with an assumption that the material brought on record by prosecution is true and such material and documents have to be considered with a view to find out whether the facts emerging from such material when taken at their face value disclose the existence of all the ingredients constituting the offence.

18. Considering aforesaid position of law, in the instant case it may be observed that in this case it was alleged in the first information report that the revisionist was working on the post of Lekhpal and on the application of defacto complainant, the Deputy District Magistrate has passed an order dated 13.12.2021 for demarcation of the land of defacto complainant. On 07.12.2021 the Revenue Inspector has directed the revisionist for measurement (Paimais) of the land at the spot but the revisionist was demanding an amount of Rs. 5,000/- from the defacto complainant for measurement (Paimais) of the land. The defacto complainant made a complaint to the Anti Corruption Establishment and thereafter a trap team comprising two independent witnesses, namely, Pradeep Kumar Srivastava and Hausala Prasahd, who were provided by the District Magistrate for that purpose, was constituted. On 24.03.2022, the said trap team has apprehended the revisionist, while he has accepted the illegal gratification of Rs. 5,000/- from the defacto complainant. The bribe amount was recovered from the revisionist and recovery memo was prepared. After investigation, revisionist-accused was charge-sheeted. In the impugned order, the trial court has referred the version of discharge application and observed that as per the prosecution version, the defacto complainant has made an application for demarcation of land for partition purpose and consequently, the Deputy District Magistrate has directed the Revenue Inspector, who further directed the revisionist-accused for doing by *paimais* of the spot. When the defacto complainant requested the revisionist-accused for *paimais*, he has demanded an illegal gratification of Rs. 5,000/- from the defacto complainant for doing *paimais*. On the complaint of defacto complainant to Anti Corruption Establishment, the revisionist-accused was apprehended, while he has accepted an amount of 5,000/-. The trial court further observed that the said version is supported by recovery memo and it has been signed by the members of the trap team. The trial court further referred the statement of defacto complainant, recorded under section 161 CrPC, as well as statements of other witnesses, who have supported the said incident. Making these references, the trial court has observed that there was sufficient evidence for

framing of charge and thus, the discharge application of revisionist-accused was rejected. Thus it is apparent that the trial court has applied its mind to the matter in dispute, including the recovery memo, and statements of witnesses. Perusal of record shows that there is overwhelming material to make out a prima facie case for charge against the revisionist. Merely because the trial court has not dealt with separately with each and every averment, made in the discharge application, it cannot be said that the impugned order suffers for non-application of mind. In view of the allegations made against the revisionist and material collected during investigation, merely because the averments made in the discharge application like that revisionist has been falsely implicated; that there is not an iota of evidence against the revisionist; that revisionist has falsely implicated or that the defacto complainant was planning to grab the land of Gram Sabha and he was falsely implicated due to this reason; that the alleged incident of trap is false and no recovery was made from the revisionist or contentions of like nature, were not dealt with by the trial court by making specific reference, it does not mean that the impugned order suffers from non-application of mind.

19. It is well settled that at this stage, trial court is not expected or supposed to hold a mini-trial for the purpose of marshalling the evidence on record. In this connection a reference may be made to the case of **Asim Shariff v. National Investigation Agency**, (2019) 7 SCC 148. No doubt, at this stage, the trial court has power 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 or not. Where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge. At this stage, the trial Judge has to exercise its judicial mind to determine as to whether a case for trial has been made out or not. In the instant matter, as stated-above, there is sufficient material to support the prosecution version, in the form of statement of complainant and other witnesses. There are statements of members of trap team, who have apprehended the revisionist

while he has accepted an amount of Rs. 5,000/- from the defacto complainant. The said trap team comprises two independent witnesses, who were provided by the District Magistrate. At this stage, the reliability of statements of witnesses cannot be judged. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence and as stated-above, even a strong suspicion would suffice. In the instant matter, considering the allegations made in the first information report and the material collected during investigation, it cannot be said that no prima facie case is made out against the revisionist. The trial court has considered the matter in correct perspective. The impugned order cannot be set aside merely because the trial court has not dealt with each and every averment of the discharge application separately. As stated-above, at this stage mini-trial cannot be held. Considering all aspects of the matter, it cannot be said that the impugned order is suffering from any such material irregularity, perversity or error of jurisdiction so as to require any interference by this Court. The revision lacks merit and thus, liable to be dismissed.

20. Accordingly, the instant criminal revision is **dismissed**.

Order Date :- 03.11.2023

Suraj/Anand