



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Rev.P./15/2022

Khoda Budh
S/o Sh. Khyoda Tikh,
R/o Damsite, Naharlagun,
PO and PS Naharlagun, Papumpare District, Arunachal Pradesh.
Mobile 97436870602, Email Nil.

VERSUS

THE STATE OF AP and 2 Ors. Through the Learned Public Prosecutor.

2:San Mosu
Age: 0
Occupation :
S/o Shri Tasa Mosu R/o Village Karte PO and PS Menchuka Shi Yomi District
Arunachal Pradesh.

3:Doi Komi
Age: 0
Occupation :
S/o Bhadur Komi R/o Village Rigo PO and PS Menchuka Shi Yomi District
Arunachal Pradesh

Advocate for the Petitioner : R. Sonar, R. Taku, N. Singye, B. Nyaruce, L. Dai,
T. Mosu, R. Gyamar, Y. Lombi, N. Basar

Advocate for the Respondents : Mr. T. Ete, learned Addl. P.P. (A.P); Mr. L. Perme,
K. Posi, D. Tamut, T. Tahar, T. Mary, T. Amerjit, T. Timba

B E F O R E
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of Hearing : 28.08.2024

Date of judgment & order : 31.08.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. R. Sonar, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State of Arunachal Pradesh, representing the respondent No. 1 and Mr. K. Posi, learned counsel for the private respondent Nos. 2 & 3.

2. This application under Sections 397/398/401 of the Code of Criminal Procedure, 1973, has been filed by the applicant, *Shri Khoda Budh*, impugning the order dated 25.05.2022, passed by the learned Sessions Judge, Yupia, in Session Case No. 10/2022, corresponding to Naharlagun Police Case No. 182/2021, under Sections 302/34 of the Indian Penal Code (IPC), by which, the respondent Nos. 2 & 3 were discharged in the above noted Sessions Case.

3. The facts relevant for consideration of the instant Criminal Revision Petition, in brief, are as follows:

(i). That on 05.11.2021, the petitioner, *Khoda Budh* had lodged an F.I.R. before the Office in Charge of Naharlagun Police Station, *inter alia*, alleging that on that day, in the early morning, at around 3.25 am, one person called him from *Tomo Riba Institute of Health and Medical Sciences Hospital* (TRIHMS) from the mobile number of the son of the informant, informing him that his son *Khyoda Tama* has been admitted in the hospital as some unknown persons had brutally assaulted him near

Helipad Naharlagun at around 0230 Hours. It was further alleged in the F.I.R. that, when the informant rushed to the hospital, he found his son was admitted in the Surgery Ward at TRIHMS. It is also stated in the F.I.R. that on 05.11.2021, at around 0930 Hours, the son of the informant succumbed to his injuries in the hospital. It is also alleged in the F.I.R. that the informant later on came to know that his son was killed by *Tanu Chije, San Mosu and Doi Komi*.

(ii). On receipt of the F.I.R., Naharlagun Police Case No. 182/2021, was registered under Sections 302/34 of the IPC and investigation was initiated.

(iii). On completion of the investigation, Charge-sheet No. 12/2022, dated 28.01.2022, was laid under Sections 302/34 of the IPC, against *Mr. Tanu Chije, Mr. San Mosu* (respondent No. 2) and *Mr. Doi Komi* (respondent No. 3). All the three accused persons including the respondent Nos. 2 & 3 herein, were arrested during the course of investigation.

(iv). After committal of the case to the Court of Sessions, it was registered as Session Case No. 10/2022 and on 25.05.2022, all the accused persons were produced before the Court of the learned Sessions Judge, Yupia, for consideration of charges against them.

(v). On 25.05.2022, the learned Sessions Judge, Yupia, by the order, which has been impugned in the instant Criminal Revision Petition, framed charges under Section 304 Part-I of the IPC against the accused No. 1, namely, *Tanu Chije*.

(vi). However, the respondent Nos. 2 & 3, who were the accused Nos. 2 & 3 in the said Session Case, were discharged on the ground of insufficient evidence against them.

4. Mr. R. Sonar, learned counsel for the petitioner has submitted that learned Sessions Judge, Yupia, had erred in discharging the respondent Nos. 2 & 3, in spite of there being a *prima facie* case against both of them. He has submitted that one of the main witnesses for prosecution side, who was also injured in the altercation, namely, *Mr. John Tapin* had categorically stated in his statement, recorded under Section 164 of the Code of Criminal Procedure, 1973, during the course of investigation, that all the three accused had attacked the deceased on the date of the alleged incident and they kept beating him till he went inside the house gate.

5. Learned counsel for the petitioner has also submitted that one another witness for the prosecution, namely, *Ms. Yami Komi Nyogen*, has also stated in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973, during the course of investigation, that on hearing noise outside the house, she rushed to the spot and saw that *Tanu* and *John* were fighting with each other outside the house gate. She also saw that even *San* (accused No. 2) joined the fight with the other boy, who had come with *John*.

6. Mr. R. Sonar, learned counsel for the petitioner has submitted that in spite of the categorical accusation against respondent Nos. 2 & 3 made by one of the main witnesses, *Mr. John Tapin*, which makes out a *prima facie* case against both the respondents, the learned Sessions Judge travelled beyond the scope of Section 227 of the Code of Criminal Procedure, 1973 and resorted to evaluating the probative value of the evidence on record and discarded the statement of *Mr. John Tapin*, holding him to be an interested witness, unreliable of any credence.

7. Learned counsel for the petitioner has also submitted that the learned Session Judge ought to have given more credence to the statement of *Mr. John*

Tapin as he was one of the injured witnesses in the incident. He submits that the evidence of injured witness has greater evidentiary value and unless compelling reasons exists, their statements are not to be discarded lightly. To substantiate his submission, he has cited a ruling of the Supreme Court of India in the case of “**Balu Sudam Khalde and Anr. Vs State of Maharashtra**” reported in **2023 SCC Online SC 355**.

8. Learned counsel for the petitioner has also submitted that the Trial Court erred in assessing the probative value of the statement of witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973, at the stage of consideration of charges. He further submits that the Trial Court erred in discarding the evidence of the injured witness, *Mr. John Tapin*, by branding him as interested witness. He submits that, even if, for the sake of argument, *Mr. John Tapin* is considered to be an interested witness, his evidence could not have been totally discarded. What the law requires is that, where the witnesses are interested, the Court should approach their evidence with care and caution in order to exclude the possibility of false implication. Learned counsel for the petitioner has relied upon a ruling of the Apex Court of India, in the case of “**State of U.P. vs. Ballabh Das and Ors.**”, reported in **(1985) 3 SCC 703**, to substantiate his submission.

9. Learned counsel for the petitioner has also submitted that the Trial Court had erred by discarding the incriminating evidence against the respondent Nos. 2 & 3 by going into the question of deciding probative value of the materials on record at the stage of consideration of charges. He submits that at the stage of consideration of charges, Trial Court is not supposed to hold a mini trial for the purpose of marshalling the evidence on record and by doing so, at the stage of consideration of charges, learned Sessions Judge, Yupia, has exceeded his jurisdiction and has erred in law. Learned counsel for the

petitioner has cited a ruling of the Apex court of India in the case of “***Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey and Ors.***”, reported in **(2022) 12 SCC 657**.

10. On the other hand, Mr. T. Ete, learned Additional Public Prosecutor has submitted that the Trial Court has correctly discharged the respondent Nos. 2 & 3 by passing the impugned order. He submits that as there was no sufficient ground for proceeding against the respondent Nos. 2 & 3, the Trial Court was correct in discharging them. He submits that the evidence on record, shows that it was accused No. 1, *Mr. Tanu Chije*, who had assaulted the deceased and said fact has also been admitted by the accused No. 1. He also submits that in his statement recorded under Section 161 of the Code of Criminal Procedure, 1973, the witness *Mr. John Tapin* had not implicated the respondent Nos. 2 & 3 and it is only in his statement recorded under Section 164 of the Code of Criminal Procedure, 1973, before the Magistrate, he had implicated the respondent Nos. 2 & 3. He, therefore, submits that the learned Session Judge, Yupia, was right in discarding the statement of *Mr. John Tapin*.

11. Learned Additional Public Prosecutor has also submitted that while considering the question of framing of charges under Section 227 of the Code of Criminal Procedure, 1973, the Judge has the undoubted power to sift and weigh the evidence for the limited purpose of finding of whether or not a *prima facie* case against the accused has been made out. He submits that the learned Session Judge is not supposed to act as a mere Post Office at the stage of consideration of charges and to frame the charges at the behest of prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out or not by the prosecution side.

12. He submits that the statement of *Mr. John Tapin* has not been corroborated by any of the witnesses, therefore, the learned Session Judge was right in discarding the evidence of *Mr. John Tapin* and discharging the respondent Nos. 2 & 3. In support of his submission, learned Additional Public Prosecutor has cited following rulings:

(i) ***Tarun Jit Tejpal vs. State of Goa and Anr.***, reported in **(2020) 17 SCC 556.**

(ii). ***P. Vijayan vs. State of Kerala and Anr.***, reported in **(2010) 2 SCC 398.**

13. Learned Additional Public Prosecutor has also submitted that the correct course of action for the petitioner would have been to file an application under Section 319 (1) of the Code of Criminal Procedure, 1973, before the Trial Court for issuing summons to respondent Nos. 2 & 3 to face the trial, as *Mr. John Tapin* has also deposed in his evidence during trial that both the respondent Nos. 2 & 3 have assaulted the deceased *Khyoda Tama* indiscriminately. However, learned Additional Public Prosecutor has submitted that the Session Judge was not wrong in discharging the aforesaid respondents by the impugned order as he correctly sifted and weighed the evidence on record for the limited purpose of finding as to whether or not a *prima facie* case was made out against the respondent Nos. 2 & 3 and thereafter, on finding insufficient materials, discharged both of them.

14. Mr. K. Posi, learned counsel for the respondent Nos. 2 & 3, has also submitted that the learned Session Judge, Yupia, has rightly discharged the respondent Nos. 2 & 3 by the impugned order and therefore, same needs no interference by this Court.

15. Learned counsel for the respondent Nos. 2 & 3 has also submitted that,

in the instant case, the altercation started initially between *Mr. John Tapin* and the accused No. 1, namely, *Mr. Tanu Chije* and later on, *Mr. John Tapin* called the deceased to the place of incident and hence, *Mr. John Tapin* is interested in getting respondent Nos. 2 & 3 convicted in this case, therefore, learned Session Judge has rightly assessed *Mr. John Tapin* to be an interested witness. He also submits that *Mr. John Tapin* may not be regarded as an injured witness as there is no record of his injury in the case record. He also submits that though *Mr. John Tapin*, in his statement, has stated that the respondent Nos. 2 & 3 also assaulted the deceased, however, no details of such assault has been described by him as to where the deceased suffered injuries due to assault by them.

16. Learned counsel for the respondent Nos. 2 & 3 has also submitted that the trial, in the meanwhile, has progressed fairly and is near its culmination as it is fixed for evidence of defence witnesses. He submits that at this stage, if the impugned order is set aside, it would delay the disposal of the pending trial and considering the nature of materials available, there is unlikelihood that it would result in the conviction of respondent Nos. 2 & 3. He, therefore, submits that the Criminal Revision Petition filed by the petitioner is liable to be dismissed.

17. I have considered the submissions made by the learned counsels for both the sides and have perused the materials available on record very carefully.

18. In this Criminal Revision Petition, this Court is called upon to examine the correctness, legality and propriety of the impugned order passed by the learned Sessions Judge, Yupia, whereby, the respondent Nos. 2 & 3 were discharged.

19. For the convenience of this Court, the relevant portion of the impugned order dated 25.05.2022, by which the respondent Nos. 2 & 3, who were the accused Nos. 2 & 3 in the Sessions Case No. 10/2022, were discharged, is

quoted hereinbelow:

“....As regards to A-2 and A-3 are concerned, this Court, after minutely perusing the materials on records, has found that although they were alleged to be part of the quarrel that took place between A-1 and one John Tapin, who later called the deceased for his help, but could not find any material from where it can be gathered that they were party to physical fight in between A-1 and the deceased. The only witness who stated that A-2 and A-3 were also assaulted the deceased is John Tapin, who called the deceased, although this witness has not stated any thing to that effect before the I.O, but he has improvised his statement by stating the same before the Magistrate, which is recorded after 45 days of the incident. This is the person with whom A-1 initially fought with and also alleged that A-2 & A-3 also supported the A-1, because of which, this person called the deceased for his help. Therefore, he is an interested witness. As such, only on the basis of the statement of this witness, as the remaining eye witness of the incident including the girl friend of this witness has not named the A-2 and A-3 to be the party to physical fighting between A-1 and deceased. That apart, there is no any other material to indicate the participation of these two accused in physical fighting between A-2 and deceased. Therefore, this Court is of the opinion that the trial against these two accused will be unnecessary and futile. Hence A-2 and A-3 are entitled for discharge on the ground of insufficient materials/evidence. Accordingly, this Court ordered that A-2, San Mosu and A-3, Doi Komi are hereby discharged from the case. Therefore, they shall be released from the jail, forthwith, if not wanted in other case.”

20. On cursory perusal of the impugned order, it appears that, the Trial Court had discharged the respondent Nos. 2 & 3, mainly on the ground that it had regarded the witness, *Mr. John Tapin*, as an interested witness and therefore, did not rely on the statement made by him. Though, *Mr. John Tapin* has made incriminating statement against both the respondent Nos. 2 & 3, it also did not rely on the statement of *Mr. John Tapin* as there were no corroborating materials of other witnesses implicating respondent Nos. 2 & 3.

21. Now, the question before this Court is to ascertain as to whether the Trial Court was right in marshalling the evidence on record, to ascertain the probative value of such evidence, at the stage of consideration of charges under

Section 227 and 228 of the Code of Criminal Procedure, 1973.

22. Section 227 of the Code of Criminal Procedure, 1973, provides that if, upon consideration of record of the case and documents submitted therewith and after hearing the submission 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 reasons for doing so.

23. The Apex Court in the case of **P. Vijayan vs. State of Kerala** (supra) has observed that the Judge, at the stage of consideration of charges, is not a mere Post Office to frame charge at the behest of prosecution but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. Thus, the Judge, at the stage of consideration of charges has merely to sift the materials on record to find out whether or not there is sufficient grounds for proceeding against the accused. At that stage, the materials have to be considered only on its face value.

24. The Supreme Court of India in the case of **Tarun Jit Tejpal vs. State of Goa and Anr.** (supra) has observed as follows:

“...8.2. In the subsequent decision in S. Selvi [State v. S. Selvi, (2018) 13 SCC 455: (2018) 3 SCC (Cri) 710] this Court has summarised the principles while framing of the charge at the stage of Sections 227/228 CrPC. This Court has observed and held in paras 6 and 7 as under : (SCC pp. 458-59)

“6. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta,

(2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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 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; 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 within his rights to discharge the accused. 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 statements 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 materials as if he was conducting a trial.

7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles : (SCC pp. 376-77, para 21)

‘(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.' "

25. The Apex Court has also observed in the case of ***Asim Shariff vs. National Investigation Agency (NIA)***, reported in **(2019) 7 SCC 148**, that the Trial Court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record.

26. In the instant case, as discussed hereinabove, one of the prosecution witnesses, namely, *Mr. John Tapin* had made categorical statement on oath, under Section 164 of the Code of Criminal Procedure, 1973 before the Magistrate, during the course of investigation that both the respondent Nos. 2 & 3 had assaulted the deceased along with accused No. 1, namely, *Mr. Tanu Chije*. Apart from his statement, one another witness, namely, *Ms. Yami Komi Nyogen*, has also implicated respondent No. 2 in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973.

27. Considering the aforesaid statements of above-named witnesses, which was recorded on oath, under Section 164 Cr.P.C. in its face value, the learned Session Judge could not have arrived at a finding that there is no sufficient ground for proceeding against the respondent Nos. 2 & 3. However, at the time of framing of charges, learned Sessions Judge, Yupia, had traversed into the question of ascertaining the probative value of the evidence on record and thereafter, discarded the statement on oath, of *Mr. John Tapin*, branding him to be an interested witness. Same is akin to holding a mini trial for the purpose of marshalling the evidence on record, which the learned Session Judge was not expected or supposed to do at the stage of consideration of charges.

28. As held by the Apex Court, that at the stage of consideration of charges under Sections 227 & 228 of the Code of Criminal Procedure, 1973, the Court is required to evaluate the materials and documents on record, with a view to find out if the facts emerging therefrom, taken at their face value, disclose the existence of alleged offence. For this limited purpose only, the Court may sift the evidence on record. However, in the instant case, the Trial Court went to the extent of discarding the statement of one of the prime witnesses, which was recorded on oath, at the initial stage itself, even before the examination of prosecution witnesses started in the trial.

29. For the reasons stated above, this Court is of the considered opinion that the learned Session Judge, Yupia, in the impugned order has exceeded his jurisdiction by discarding the evidence of *Mr. John Tapin* at the stage of consideration of charges itself, branding him to be an interested witness. The impugned order is, therefore, liable to be set aside.

30. Accordingly, the impugned order dated 25.05.2022, passed by the learned Sessions Judge, Yupia, in Session Case No. 10/2022, corresponding to

Naharlagun Police Case No. 182/2021, to the extent of discharging the accused No. 2, namely, *San Mosu* and accused No. 3, namely *Doi Komi*, is hereby set aside.

31. Both the above-named accused, namely, respondent Nos. 2 & 3 are directed to appear before the Trial Court on 20.09.2024 and on such appearance, the learned Session Judge, Yupia, shall consider the question of framing charges against both of them afresh, after hearing both the sides and after considering the materials on record and thereafter, proceed with the pending trial, in accordance with law.

32. With the above observation, this Criminal Revision Petition is hereby allowed and disposed of.

JUDGE

Comparing Assistant