

GAHC010288682023



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

Case No. : Crl.Rev.P./561/2023

ASHIRBAD HAZARIKA
S/O DR. INDRA KUMAR HAZARIKA
R/O SHANTIDAN PATH,
RUPALIM NAGAR,
LANKESHWAR
P.O. GAUHATI UNIVERSITY
P.S. JALUKBARI
DIST. KAMRUP (M), ASSAM
PIN-781014

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SHRI RAJU TURI
S/O LATE RAMA TURI
R/O PRAJA PATHAR
P.S. DHEKIAJULI
P.O. DHEKIAJULI
DIST. SONITPUR
ASSAM
PIN-78411

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 09.05.2024

Heard Mr. K.N. Chaudhury, learned Senior counsel, assisted by Mr. T. Deuri,

learned counsel appearing for the petitioner. And also heard Mr. J.A. Hassan, learned Special Public Prosecutor representing the State of Assam and Mr. A.N. Ahmed, learned counsel appearing for respondent No. 2.

2. By filing this revision petition u/s 401 read with section 397 of the CrPC, the petitioner has prayed to set aside the impugned order dated 28/11/2023, passed by the learned Special Judge, Darrang in connection with Special (POCSO) Case no. 131/2022.

3. The case of the petitioner is that on 11/06/2022, an FIR has been lodged before the officer-in-charge of Dhula Police Station by one of the accused, stating *inter alia* that the victim girl, aged about 13 years, stayed in a rented house along with the informant, was found hanging herself in the ceiling fan of their living room by using a piece of scarf. Accordingly, the informant brought down the victim after untying the hanging rope. Thereafter, a case was registered vide Dhula P.S. UD Case No. 10/2022.

4. The further case of the petitioner is that on 12/06/2022, the opposite party No. 2 lodged another FIR before the officer-in-charge, Dhula police station, stating *inter alia* that around two years back accused No. 2 Raju Nath, brought his minor daughter by stating that he would take care of the education of his daughter and also help them with some house hold work. Later on, the victim was kept in the house of accused Krishna Kamal Baruah as a maid. On 11/06/2022, accused Raju Nath informed the father of the victim that his daughter died due to accident. He saw the dead body of his daughter later on, when the dead body was taken out for postmortem examination in Mangaldoi Civil Hospital. He suspected that accused Krishna Kamal Baruah had killed his daughter after committing rape on her. Accordingly, a case was registered vide Dhula P.S. Case No. 114/2022 u/s 376/302 IPC read with Section 10 of POCSO Act and Section 14 of Child Adolescent Labour

Prohibition Act. However, during investigation section 120(B)/ 201/218 of IPC was also added.

5. In connection with the alleged FIR, the petitioner was arrested and subsequently he was granted bail by this Court. After completion of investigation, charge-sheet has been laid against the prime accused Krishna Kamal Baruah u/s 376/302 IPC and POCSO Act. After that supplementary charge-sheet has been submitted against the present petitioner and other co-accused u/s 218/201/409 IPC.

6. On receipt of the summons, the accused/petitioner appeared before the court of Special Judge, Darrang, to face the trial. On 28/11/2023 the Special Judge framed charges against the petitioner u/s 218/201 IPC. Being highly aggrieved with the said order, this Revision has been preferred by the accused/petitioner.

7. It was urged by the learned counsel for the petitioner that the accused/petitioner was serving as the Circle Officer, Dalgaoon Revenue Circle at the relevant time of incident. On the requisition of the investigating officer, the petitioner had conducted the inquest on the dead body of the minor victim girl. While conducting the inquest, the petitioner had noticed that there was a mark on the neck of the victim and the apparent cause of death was suicide due to hanging.

8. It is further submitted that after conducting inquest on the dead body of the victim, the petitioner prepared the inquest report and the apparent cause of death was reflected in the inquest report as suicide due to hanging. Thereafter, the petitioner took the signatures of the witnesses in the inquest report.

9. The learned counsel for the petitioner has further argued that the most important ingredients of the offence punishable u/s 218 of the IPC is the intention and that the entries made by the petitioner in the inquest report was with an intention to

save the offender. But in this case, there is no evidence which shows that the accused/petitioner tried to screen the prime accused Krishna Kamal Baruah by making a wrong/false entry with respect to the death of the victim. It is also submitted that as there is no incriminating material against the petitioner u/s 218 IPC, there is no question of framing charge u/s 201 IPC also.

10. It is also the submission of the learned counsel for the petitioner that it was the part of the official duty of the accused/petitioner to conduct the inquest over the dead body of the victim and prepare a inquest report. The act done by the petitioner was in his official capacity and in the discharge of his official duties as a public servant.

11. It is also contended that the Hon'ble Apex Court in a catena of decisions has held that the purpose of holding an inquest is very limited to ascertain as to whether a person has committed suicide or is killed by another or by an animal or by machinery or by an accident or died under circumstances raising a reasonable suspicion that some other person had committed an offence. The inquest report is not a substantive piece of evidence. The sole aim of preparing an inquest report is to preserve the first look of the dead body and it need not contain every detail of the dead body.

12. Learned counsel for the petitioner strenuously contended that the allegations against the petitioner even if they are taken at their face value and accepted in their entirety, do not prima facie constitute the offence u/s 218/201 IPC. Thus, framing of charge u/s 218/201 IPC by the Sessions Court is without any material on record.

13. According to the learned counsel for the petitioner, the materials which are placed before the court does not disclose the grave suspicion against the accused/petitioner as such the framing of charge u/s 218/201 IPC against the present petitioner is illegal and the same is liable to be set aside and quashed.

In support of his submission, learned counsel has relied on the following case laws –

- a. AIR 1955 SC 216 (Pandurang and others vs. State of Hyderabad)
- b. AIR 2003 SC 1164 (Amar Singh vs. Balwinder Singh and others)

14. Learned Special Public Prosecutor repudiates the submission made as above and contended that the petitioner while posted as Circle officer Dalgaon, by misusing his position, forged the evidence and intentionally filled up the inquest form by writing the word 'suicide/hanging', though he himself did not examine the dead body. It was also alleged that when the petitioner visited the place of occurrence, the dead body was already brought down from hanging position as such he has made false statement in the inquest form with an intention to save the prime accused booked under the charge of murder. As per case diary, sufficient credible evidence prima facie showing, complicity of the petitioner in the crime and therefore, at this stage, it cannot be said that no offence is made out against the petitioner.

15. Learned Special Public Prosecutor has further argued that at this stage, the disputed defense available to the petitioner cannot be considered for deciding the application u/s 401/397 CrPC. The scope of exercising the revisional power by this Court is very limited.

16. Learned Special Public Prosecutor has further submitted that it is settled principle of law that at the stage of considering an application for discharge, the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the fact emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

17. By referring the judgment vide State of Tamil Nadu vs. N. Suresh Rajan and others, reported in (2004) 11 SCC 709, learned Special Public Prosecutor has pointed out that Hon'ble Supreme court has held as under-

“....At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

Learned Special PP also has placed reliance on the following case laws –

- a. Criminal Appeal No. 1399/2023 [Captain Manjit Singh Viridi (Retd.) vs. Hussain Mohammad Shattaf and others]
- b. Criminal Appeal No. 714/2019 (Deepakbhai Jagdish Chandra Patel vs. State of Gujarat and another)
- c. 2023 Live Law SC 874 (State of Gujarat vs. Dilip Sinh Kishor Sinh Rao)

18. Having heard the learned counsel for the parties, now the question comes whether this Court with such limited power under revisional jurisdiction has exercised such power in discharging the accused/petitioner from charges framed by the learned trial court.

19. The Hon'ble Supreme Court in catena of decisions has observed that at the stage of framing charges the focus should be on whether there is sufficient ground for presuming that the accused has committed an offence and not on the final test of guilt.

20. In the case of **Amit Kapoor v Ramesh Chander**, reported in **(2012) 9 SCC 460**, it was held that –

“...12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its

revisional jurisdiction unless the case substantially falls within the categories afore-stated. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C.”

21. In the aforesaid case, the Hon'ble Supreme Court also enunciated a set of principles which the High Courts must keep in mind while exercising their jurisdiction under the provision:

“27. .. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in

exercise of its inherent powers.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

22. In ***State of Rajasthan v Fatehkaran Mehdu***, reported in **(2017) 3 SCC 198**, the Hon'ble Supreme Court has elucidated on the scope of the interference permissible under Section 397 with regard to the framing of a charge. It was held thus-

"26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be

applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure."

23. In the case of **Ramesh Kumar vs. State of Chhatisgarh**, reported in **(2001) 9 SCC 618**, it was noted that at the stage of framing of charges, the court has to consider the material only with a view to find out if there is a ground for presuming that the accused had committed the offence which is reproduced as below

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"....25. It is trite that at the stage of framing of charge, 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 or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

24. In **Rajbir Singh vs. State of UP**, reported in **(2006) 4 SCC 51**, the Hon'ble Supreme Court noted that —

"....9. In Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, the Court while examining the scope of Section 227 held as under: "... Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that 'the judge shall discharge when he

considers that there is no sufficient ground for proceeding against the accused'. The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate inquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime."

25. Reverting to the case in hand, the allegation against the present petitioner is that he conducted the inquest on the dead body of the deceased by stating that it is a case of suicide/hanging. It is true that the act was done in the discharge of his official duty. But it is not the stage to consider regarding intention on the part of the petitioner to form his opinion that it is a case of suicide due to hanging or that the petitioner did so to save the prime accused Krishna Kamal Baruah.

26. In view of the aforesaid legal proposition and under the facts and circumstances of the case, this court is of the opinion that this is not a fit case to interfere with the order of the trial court on framing of charge. Hence, the criminal revision petition is dismissed.

27. It is clarified that this judgment/order shall not affect the merits of the trial.

28. This revision petition is disposed of accordingly.

JUDGE

Comparing Assistant