

Court No. - 74

Case :- APPLICATION U/S 482 No. - 12738 of 2020

Applicant :- Lakshmi Narayan And 4 Others

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

Counsel for Applicant :- Tripathi B.G. Bhai

**Counsel for Opposite Party :- Bhanu Prakash Verma,G.A.,Gaya
Prasad Mishra,Pratap Kanchan Singh**

Hon'ble Saurabh Shyam Shamshery,J.

1. This case is arising out of a rejection of a discharge application filed by applicants who are accused in a case arising out of Charge sheet dated 21.09.2016 U/s 364, 201, 120-B IPC.

2. At the outset, it has been brought into notice of this Court that applicants have challenged above referred charge sheet by way of filing an Application U/s 482 No. 23473/2017 which was rejected vide reasoned order dated 16.04.2019. For reference, relevant part thereof are quoted below -:

“6. Having heard learned counsel for the parties and having perused the record as has been brought before this Court, it is clear, neither Babli has yet been out nor her body recovered. The submission of learned counsel for the applicants in this regard that he had given details of the whereabouts of Babli during the police investigation, but the same was not investigated, may remain a matter to be considered at the appropriate stage during the trial, which is yet to commence. At present the consideration has to be based on and confined to the case diary material only.

7. At present, the case diary material including the various statements recorded under Section 164 Cr.P.C. clearly bring out the ingredients of the offence alleged, inasmuch as, all witnesses

have specifically stated, Babli had been done to death. The fact that any compromise may have reached between the parties earlier can never be cited as a circumstances or evidence to establish that the incident never took place inasmuch as if the statements recorded under Section 164 Cr.P.C. state the truth, the compromise itself would be void. At this stage, prima facie, it is a plausible explanation of the delay that the younger daughter of the opposite party no.2 was married to applicant no.1 and that therefore he was forced to keep quiet at the relevant time on considerations of safety of his younger daughter and grand child. In any case, delay in such matters may not be decisive in view of the entirety of the facts and circumstances noted above.

8. Accordingly, at this stage, ingredients of the offence alleged appear to be made out. There is no warrant to either quash the chargesheet or the summoning order. The application lacks merit and is accordingly, dismissed. "

3. Sri Tripathi B.G. Bhai, learned counsel for applicants submits that there are material in charge sheet and it has been recorded in *parcha* that said Babli was located at an Ashram in Haridwar though she was not recovered but said details are sufficient that she is still alive, as such, offence U/s 364, 201, 120-B IPC may not be made out. He also refers details of said *parcha* annexed along with this application.

4. Learned counsel by referring impugned order submits that trial Court after referring arguments of applicants and thereafter recording judgments on law in regard to discharge application, in a very summarily manner, passed an order consisting only 5 lines and rejected discharge application. For reference, said consideration is quoted below -:

“पत्रावली का अवलोकन किया। उभय पक्षों को सुना। प्रार्थी द्वारा दिये गये प्रार्थना पत्र एवं पत्रावली पर उपलब्ध तथ्य में विरोधाभास है जहां दो कथनांक हों वहां सत्यता साक्ष्य कसौटी पर जांचना आवश्यक हो जाता है। पत्रावली पर अभियुक्त के विरुद्ध प्रथम दृष्टया साक्ष्य उपलब्ध है। अतः

इस स्तर पर उपरोक्त विधि एवं विधि-व्यवस्था के आलोक में उपरोक्त प्रार्थना पत्र 6 क स्वीकार किये जाने योग्य नहीं है। प्रार्थना पत्र संख्या-6 क निस्तारित किया जाना न्यायोचित है।”

5. Learned AGA and Sri Bhanu Prakash Verma, learned counsel for opposite party-2 have supported the impugned order that there are sufficient material in charge sheet to frame charges. Challenge to charge sheet was rejected by a reasoned order and similar arguments were raised before trial Court in discharge application. Both parties have placed reliance on judgments of Supreme Court in **State of Rajasthan vs. Ashok Kumar Kashyap, (2021)_11 SCC 191**, **Asim Shariff vs. NIA, (2019) 7 SCC 148** and **Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra, (2008) 10 SCC 394** and interpreted in their favour.

6. I have considered above submissions and perused the record.

7. This Court in **Viresh Kumar @ Viresh Singh vs. State of U.P. and another, 2024:AHC:147986** has considered various judgments passed by Supreme Court on issue of discharge and held that a discharge application has to be considered in accordance with law and order to it shall be accompanied by adequate reasons. For reference, relevant paragraph is quoted below -:

“16. Presently the Court is considering the case only at the stage of discharge application. Law in regard to consideration of discharge application is being considered by the Supreme Court in the case of Vishnu Kumar Shukla and another vs State of UP 2013 INSC 1026 and relevant part thereof is mentioned hereinafter:-

“19. In Rumi Dhar v. State of West Bengal, (2009) 6 SCC 364, this Court held that the Judge concerned with an application under Section 239, CrPC has to ‘... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall

subserve the requirements of law.'

20. In *State of Tamil Nadu v. N Suresh Rajan*, (2014) 11 SCC 709, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are well-settled, courtesy, inter alia, *State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39; *Union of India v. Prafulla K Samal*, (1979) 3 SCC 4; *Stree Atyachar Virodhi Parishad v. Dilip N Chordia*, (1989) 1 SCC 715; *Niranjan Singh Karam Singh Punjabi v. Jitendra B Bijjaya*, (1990) 4 SCC 76; *Dilawar B Kurane v. State of Maharashtra*, (2002) 2 SCC 135; *Chitresh K Chopra v. State (Government of NCT of Delhi)*, (2009) 16 SCC 605; *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460; *Dinesh Tiwari v. State of Uttar Pradesh*, (2014) 13 SCC 137; *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547; and *State (NCT of Delhi) v. Shiv Charan Bansal*, (2020) 2 SCC 290. We need only refer to some, starting with *Prafulla K Samal* (supra), where, after considering *Ramesh Singh* (supra), *K P Raghavan v. M H Abbas*, AIR 1967 SC 740 and *Almohan Das v. State of West Bengal*, (1969) 2 SCR 520, it was laid down as under:

'10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(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 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 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.'

(emphasis supplied)

21. In *Niranjan Singh Karam Singh Punjabi* (supra), this Court was alive to reality, stating that '... it cannot be expected even at the 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.' If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused, as pointed out in *Sajjan Kumar v. Central Bureau of Investigation*, (2010) 9 SCC 368. The Court, in *Dinesh Tiwari* (supra) had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is 'strong suspicion', reference to *Dipakbhai Jagdishchandra Patel* (supra) is warranted, where it was explained that it is '... 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.'

22. In a recent judgment viz. *State of Gujarat v. Dilipsinh Kishorsinh Rao*, 2023 INSC 894, 2023 SCC OnLine SC 1294. this Court held:

7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial.

Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. 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 facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. ...

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11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.'

(emphasis supplied)'''

8. At this stage, Court is not entering into merit of case whether said Babli is alive or not. It is on record that she has not been recovered till date.

9. Court considers that above referred operative part of impugned order which is only consideration is not sufficient that there was application of mind. Said paragraph, if tested in light of judgments referred above, it would fail.

10. Accordingly, Court is of considered opinion that impugned order dated 19.12.2019 passed by Additional District and Sessions Judge, Court-13, Mathura in Sessions Trial No. 451/2019 (State vs. Vishnu and others) U/s 364, 201, 120-B IPC, pending before Additional District and Sessions Judge, Court-13, Mathura in present form does not survive, hence, is set aside.

11. However, this application is **disposed of** by remitting the matter back to concerned Court to pass a fresh order, after hearing rival parties, expeditiously and taking note of judgments referred above.

Order Date :- 24.9.2024

N. Sinha