

Court No. - 64

Case :- APPLICATION U/S 482 No. - 26032 of 2024

Applicant :- Dr Satish

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

Counsel for Applicant :- Rajrshi Gupta, Sudhanshu Kumar, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Shri Dileep Kumar, learned Senior Advocate assisted by Sri Sudhanshu Kumar, learned counsel for the applicant, Sri Ajay Singh, learned A.G.A-I for the State and perused the material brought on record.

3. The present application under Section 482 Cr.P.C. has been filed by the applicant Dr. Satish with the following prayers:-

"It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and set aside the impugned orders dated 07.06.2024 and 06.07.2024 passed by the learned Additional Sessions Judge/Special Court, P.C. Act, Court No.04, Gorakhpur in Special Trial No. 2143/2017 (State Vs. Manish Bhandari and Others), arising out of Case Crime No. 428/2017, under Sections 308, 406, 409, 466, 468, 469, 471, 120B I.P.C. and Section 7/13 Prevention of Corruption Act, Police Station Gulriha, District Gorakhpur and allow the Discharge Application of the applicant filed under Section 227 Cr.P.C. being Paper No. 185Kha.

It is further prayed that this Hon'ble Court may graciously be pleased to stay effect and operation of impugned orders dated 07.06.2024 and 06.07.2024 passed by the learned Additional Sessions Judge/Special Court, P.C. Act, Court No.04, Gorakhpur in Special Trial No. 2143/2017 (State Vs. Manish Bhandari and Others), arising out of Case Crime No. 428/2017, under Sections 308, 406, 409, 466, 468, 469, 471, 120B I.P.C. and Section 7/13 Prevention of Corruption Act, Police Station Gulriha, District Gorakhpur and stay the further proceedings of Special Trial No. 2143/2017 (State Vs. Manish Bhandari and Others) pending before the Court of the learned Additional Sessions Judge/Special Court, P.C. Act, Court No.04, Gorakhpur during the pendency of the application. And or pass such other and further order which this Hon'ble Court may deem fit and proper in the circumstance of the case, otherwise the applicant shall suffer from irreparable loss and injury."

4. The facts giving rise to the present matter are that a FIR was lodged on 23.8.2017 by K.K. Gupta, Director General, Medical Health, U.P. Lucknow against the applicant and eight other persons namely Manish Bhandari, Udai Pratap Sharma, Sanjay Kumar Tripathi (Asst. Clerk Accounts), Sudhir Kumar Pandey (Junior Clerk Accounts), Dr. Rajiv Mishra, Dr. Kafeel Khan (Incharge Nodal 100 bed AES Ward), Dr. Purnima Shukla (Senior Homeopathic Doctor) and Gajanand Jaiswal

(Chief Pharmacist) under Sections 409, 308, 120-B, 420 IPC, Section 8 Prevention of Corruption Act, Section 15 of Indian Medical Council Act, 1956 and Section 66 of I.T. Act, 2000 with the allegation that on 10/11.8.2017 there was a news published in the newspaper regarding death of children in B.R.D. Medical College, Gorakhpur from which the following facts came to be known:-

(I). In various wards in B.R.D. Medical College, liquid oxygen gas is supplied for life saving purpose by M/S Pushpa Sales Pvt. Ltd. of which the responsibility of uninterrupted supply of the said liquid oxygen was upon M/S Pushpa Sales Pvt. Ltd. but the Company did not fulfill its responsibility and the said act comes within the act of an offence. On 3.8.2017 the employees of the Medical College told the Company that liquid oxygen is going to finish but the supply of the same was not done despite knowing the fact that stoppage of it may lead to death and supply of liquid oxygen was stopped for which the doctors made secondary arrangement of supply through oxygen cylinders and jumbo cylinders. The act of the Company falls within the act of an offense.

(II). In the financial year 2017-18 total Rs.454 lakh were allotted to the Medical College out of which Rs. 63.65 lakh could have been given to the Company in the month of April but despite various requests and letters to the Principal, the bill was not cleared intentionally for which Udai Pratap Sharma, the Assistant Clerk in the Accounts Department, Sanjay Kumar Tripathi, Assistant Clerk, Sudhir Kumar Pandey in conspiracy with the Principal Dr. Rajiv Mishra with an intention to earn illegal money did not pay the money.

(III). Dr. Rajiv Mishra, the Principal of the Medical College despite money being available for the year 2016-17 did not pay the required amount and Rs.250 lakh had lapsed. Like this in the month of August despite there being budget available he wanted illegal gratification and for it the payment was stopped due to which crisis had arisen.

(IV). Dr. Rajiv Mishra, the Principal of the Medical College was aware of the shortage of oxygen and also that the same may cause crisis but still without bringing it to the knowledge of the higher officials absented himself in the headquarters on 10.8.2017. When the news of patients dying was published in the newspapers, he intentionally went outside the hospital which also shows his conspiracy in the matter.

(V). Dr. Satish, H.O.D. Anesthesia/In-charge Oxygen left the headquarter without any permission on 11.8.2017 due to which an adverse situation arose despite the fact that it was in his knowledge that due to shortage of liquid oxygen there would be threat to life of patients. He did not diligently perform his duties and did not inform the higher officials. If he would have timely taken action then the supply of oxygen could not have been

disrupted. Despite knowing that the patients may die, he did not take any action for the safety of mankind.

(VI). Dr. Kafeel Khan, In-charge Nodel 100 bed, AES Ward did not inform the higher officials regarding shortage of oxygen due to which children could have died and he thus did not perform his official duty diligently. Despite having no registration in the U.P. Medical Council, he is running a nursing home in the name of his wife Shavista Khan and is cheating people by using his name board and that he is doing practice there. Dr. Kafeel Khan despite being the In-charge Nodel did not adhere to the safety of the patients which was expected from him and did not do such acts to save their life and despite being a Government Doctor is working in the nursing home of his wife. He has given false facts on print and digital media.

(VII). Dr. Purnima Shukla, Senior Homeopathic Medical Officer and wife of the then Principal Dr. Rajiv Mishra used to extort illegal money through phone from the accounts department which was told by its employees. She was involved in the corrupt practices of her husband in the Medical College and with the help of officers in the accounts department was involved in it which cannot be negated.

(VIII). Gajanan Jaiswal, Chief Pharmacist entered into conspiracy with Dr. Purnima Shukla, the wife of Dr. Rajiv Mishra and on commission basis used to give payments on bills of forms as per bill in an illegal manner and used to extort money illegally. Thus Dr. Rajiv Mishra, the suspended Principal Dr. B.R.D. Medical College, Professor Satish Kumar of Anesthesia department, Dr. Kafeel Khan, lecturer Pediatric department, Dr. Purnima Shukla, Gajanand Jaiswal, Chief Pharmacist, Sanjeev Tripathi, Assistant Clerk, Sudhir Kumar Pandey, Assistant Clerk, Udai Pratap Sharma, Junior Assistant Clerk Accounts have committed negligence and are involved in corruption due to which persons have died.

5. The matter was investigated and a charge sheet dated 26.10.2017 was submitted against the applicant and six other persons. In so far as the applicant is concerned, charge sheet was submitted against him under Section 120-B, 466, 468, 469, 471, 308 IPC and Section 7/13 Prevention of Corruption Act. A supplementary charge sheet dated 22.11.2017 was submitted against two co-accused persons. The court concerned took cognizance upon the same and summoned the accused persons.

6. The applicant filed an application no.185-Kha dated 1.12.2018 under Section 227 Cr.P.C. claiming discharge, the same was rejected vide order dated 7.6.2024 which is one of the orders impugned herein. Subsequently vide order dated 6.7.2024 passed by Additional Sessions Judge/Special Court, P.C. Act, Court No.4, Gorakhpur charge has been framed against the applicant for offences under Sections 308, 466, 468, 469, 471, 120-B IPC

and Section 7/13 Prevention of Corruption Act, 1988. The same is also impugned herein.

7. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is submitted that the court concerned while rejecting the application for discharge of the applicant opined that the applicant had derelicted in his duty which in no manner can be the ground for making him as an accused in the matter and framing charge against him. The same may be a matter to be considered in the departmental proceedings. It is further submitted that the applicant is the anesthetic and HOD in the college who was given additional charge vide order dated 12.5.2016 of the Central Gas Pipe Line and Gas Tank but was not responsible for the supply of liquid oxygen to the hospital. It is next submitted that an application under the R.T.I Act was moved on which it was informed that there is no post by the name and description of Oxygen In-Charge in the Medical College. It is further submitted that the Central Pipe Line Operator wrote a letter to the head of the wing with its copy marked to the applicant and others that the stock of oxygen is less and as such immediate arrangement be made for oxygen since the same is about to finish within three days. The applicant gave a letter to the Principal of the Medical College on 3.8.2017 informing him that due to non-payment of dues, supply of oxygen gas is not being done. He submitted that a further letter dated 10.8.2017 was given by the Central Pipe Line Operator informing about the scarcity of oxygen and threat to the patients which was immediately forwarded by the applicant to the concerned officer on the same day for necessary action. It is further submitted that the applicant had applied for leave through his application dated 9.8.2017 for being granted to him from 11.8.2017 to 17.8.2017 for which he had got his air tickets booked on 3.7.2017 along with his wife and had also undertaken journey through flight on 11th August. He had vide his order dated 9.8.2017 designated a doctor to look after his work since he was going on leave from 11.8.2017 to 17.8.2017. It is further submitted that on coming to know about the present incident, the applicant returned back immediately on 12.8.2017 along with his wife without even waiting for attending the convocation of his son for which he had gone. It is submitted that the material collected during investigation does not show any active role of the applicant in the matter. The applicant had left the headquarter for his personal programme for which he had already applied for leave and had booked air tickets much earlier. Learned counsel for the applicant has placed before the Court the order passed by a coordinate Bench of this Court dated 15.5.2018 passed in Criminal Misc. Bail Application No.382 of 2018 (Satish Vs. State of U.P.) by which the applicant was granted bail and has made an endeavour to show that the undisputed fact before the Court is that applicant has not been assigned any work with relation to award and contract for supply of oxygen and for release of payment of supply. He has further placed before the Court on the judgement of the Apex Court in the case of **Ram Prakash Chadha Vs. The State of U.P. : 2024 INSC 522, para 15** and has submitted that even to frame a charge there should be strong suspicion and there has to be sufficient material by the prosecution to do so. It cannot be based on supposition, suspicions and

conjectures. Learned counsel for the applicant has further placed before the Court on order of a Division Bench of Bombay High Court, Nagpur Bench at Nagpur in the case of **Dr. Bhushan Vs. State of Maharashtra and another in Criminal Writ Petition No.225 of 2018 decided on 9.3.2021** and while placing para 2, 13 and 14 of the same argued that in the present case also the petitioner therein was not present at the time of incident and as such the Court held that he cannot be held liable for the act for which he was charged and thus quashed the charge sheet. It is submitted that as such the present petition be allowed.

8. Learned counsel for the State opposed the prayer for quashing and the present petition and submitted that the applicant is named in the FIR. There is role assigned to him therein. After investigation in a thorough manner charge sheet has been submitted against him on which the court concerned took cognizance. It is submitted that the discharge application under Section 227 Cr.P.C. has been rejected by the concerned trial court by a speaking and well reasoned order which does not call for any interference. It is further submitted that even further since the trial court has framed charges against the applicant vide its order dated 6.7.2024, the order rejecting the discharge application cannot now be looked into and challenged. It is submitted that role has been assigned to the applicant and further that the evidence as collected during investigation goes to show that the applicant was involved in taking commission and accepting it from the supplier for supply of oxygen and since the same was pending, the payment was not done due to which the oxygen supply was short as a result of which death occurred in the hospital. The present petition is devoid of any merit and be dismissed.

9. After having heard learned counsel for both the parties and perusing the records, it is evident that the applicant is named in the FIR and is a doctor in the medical college and head of anesthesia department. He was given additional charge of the central gas pipe line and liquid oxygen gas tank and its related work and its execution. The investigation has concluded on which charge sheet has been submitted against the applicant and other co-accused persons on which cognizance was taken. The application for discharge of the applicant under Section 227 Cr.P.C. has been rejected by the trial court as such now charges have been framed against him under various sections as has already been stated above. The argument of learned counsel for the applicant that he applied for leave and went outside the city through flight is a matter of defence. The documents regarding air travel being air ticket and boarding pass are the documents of defence which cannot be looked into at this stage. However, the fact that the applicant was not the person in-charge and had no role in supply of oxygen is also a matter to be considered at the stage of trial. In so far as the judgement of the Division Bench of Bombay High Court is concerned, the case therein stood different on its facts since the same was of administration of a different drug instead of injection as prescribed by a sister present on duty. The petitioner therein was not present at the time of administration of the same as such the Court proceeded to decide the matter. The facts of the

present case are distinguishable in nature. In so far as the judgement of the Apex Court in the case of Ram Prakash Chadha (Supra) is concerned the dictum of the Apex Court in the said judgement is that there has to be sufficient material by the prosecution to frame charge, the same cannot be based on supposition, suspicions and conjectures. The fact in the present case to show that the applicant was not present and was outside from the hospital and was travelling is a matter of defence, even the duty of the applicant and his role in the matter is also a matter of defence. The evidence collected during investigation goes to show that he was involved in illegal acts of illegal extortion of money for payment of money of oxygen supply. The law with regards to discharge and framing of charge is trite. The defence of an accused cannot be looked into at this stage. The Apex Court with regards to the power of discharge and framing of charge has held as under:-

(i) Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia : (1989) 1 SCC 715, para 19. The same reads as under:

“19. We wish to add a word regarding interference by the High Court against a charge framed by the Sessions Court. Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Besides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed.

(emphasis supplied)”

(ii) State of Orissa V. Debendra Nath Padhi : (2005) 1 SCC 568, para 8, the same reads as under:

“8. What is the meaning of the expression “the record of the case” as used in Section 227 of the Code. Though the word “case” is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable

exclusively by the Court of Session, he shall commit “the case” to the Court of Session and send to that court “the record of the case” and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

(emphasis supplied)”

(iii) State of Gujarat Vs. Dilipsinh Kishorsinh Rao : 2023 (252) AIC 47, para 7, 8, 10, 11, 12, 14 and 15. They read as under:

“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.

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. This Court in *State of Tamil Nadu v. N. Suresh Rajan*, (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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 the 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.”

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 *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659 and *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.

14. This Court in the aforesaid judgment has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr. P.C. is sought for as under:

“27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. 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:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

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.

27.9. 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.”

15. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge.

(emphasis supplied)”

10. Looking to the facts and circumstances of the case and the law on the issue, this Court comes to the conclusion that the order of framing charge does not suffer from any irregularity or illegality. Even the order rejecting discharge application of the applicant under Section 227 Cr.P.C. is a well considered and detailed order which does not call for any interference by this Court.

11. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

(Samit Gopal, J.)

Order Date :- 17.9.2024
Gaurav Kuls