

Court No. - 15

Case :- APPLICATION U/S 482 No. - 1488 of 2024

Applicant :- Abhay Singh And 3 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. And Another

Counsel for Applicant :- Anuj Pandey, Anand Kumar Yadav, Ashish Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Mr. Anuj Pandey, learned counsel for the applicants, as well as Shri Rajesh Singh, learned A.G.A., for the State, and perused the record, including the case diary.

2. The applicants, by means of the instant application under Section 482 CrPC, have challenged the order dated 21.12.2023 passed by the learned Judge, Small Causes/Special Court, MPMLA, Ayodhya in Case No.879 of 2023, arising out of case crime no.0471 of 2017, under Sections 188 IPC read with Sections 126-A and 127 of the Representation of the People Act, 1951 lodged at police station Gosaiganj, district Faizabad (now Ayodhya), copy of which is contained in Annexure-6 to the application.

3. Learned counsel for the applicants submits that the FIR with false and concocted allegations has been filed by the informant against the applicants, without there being any cogent material or evidence and after investigation charge-sheet has also been filed. However, the applicants have challenged the charge-sheet and the summoning order passed by the trial court dated 17.12.2022 and also the entire proceedings of the case before this court by filing an application under section 482 CrPC No.383 of 2023 and vide order dated 17.01.2023 the said application was finally disposed of, permitting the applicants to

file discharge application before the trial court through counsel, taking all pleas and grounds available to them within a period of 10 days from the date of the passing of the order with a consequential order that if such an application is filed, the trial court shall consider and dispose of the same by passing a speaking and reasoned order and till disposal of the discharge application, it was provided that no coercive action shall be taken against the applicants. It is further submitted that it is in pursuance of the aforesaid order, the applicants have filed a discharge application under section 239 CrPC, however, by passing the impugned order the said discharge application has been dismissed by the special court without assigning cogent reasons. It is vehemently submitted that the trial court, while rejecting the discharge application of the applicants, has not considered the fact that even if the case of the prosecution is taken on its face, the ingredients of section 126-A and 127 of the Representation of People Act, 1952 may not attract.

4. Elaborating further, it is submitted that it is apparent on record that the FIR of this case has been lodged on the basis of political enmity and Section 127 of the Representation of People Act relates to an offence for causing disturbance at an election meeting, while the case of the prosecution is not of disturbing an election meeting and when there is no material with regard to Section 127 of the Representation of People Act, the other penal section, wherein the charge sheet has been submitted, remains Section 126-A of the Representation of People Act which is a non-cognizable offence and the investigating agency could not investigate the same without taking permission of the court under section 155(2) CrPC and, thus, no offence is emerging against the applicants and, therefore, the impugned order passed by the special court is liable to be set-aside and the applicants are entitled for discharge.

5. Sri Rajesh Singh, learned A.G.A., however, states that at the stage of framing of charge only *prima facie* case is required to be seen and,

it is not a stage where meticulous exercise may be performed by the court, as is required at the stage of culmination of the trial.

6. While drawing attention of this court towards the FIR as well as the statements of various witnesses recorded in the case diary, it is submitted that *prima facie* a case under sections 127 and 126-A of the Representation of People Act is emerging against the applicants and there is *prima facie* and sufficient grounds available to proceed further. While drawing attention of this Court towards Section 155(4) CrPC, it is submitted that if one of the sections, wherein the investigation is being done, is cognizable, the other penal sections would also be deemed as cognizable and, therefore, no illegality has been committed by the trial Court.

7. Having heard learned counsel for the parties and having perused the record, including the case diary, the crux of the submission of learned counsel appearing for the applicants is that even if the case of the prosecution is taken on its face, sections 127 and 126-A of the Representation of People Act may not attract against the applicants. In this regard, Sections 126-A and 127 of the Representation of People Act are required to be recalled and the same are being reproduced here under:-

.

"126. (a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

(b).....

(c)

(2).....

(3).....

127. Disturbances at election meetings.—

(1) Any person who at a public meeting to which this section

applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both.

(1A) An offence punishable under sub-section (1) shall be cognizable.

(2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

(3) If any police officer reasonably suspects any person of committing any offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant."

8. Perusal of the FIR would reveal that the allegations have been levelled therein that within the premises of Rambali Inter College, Gosainganj first party- Abhay Singh, former M.L.A. along with 35-40 persons and second party- Vikas Singh along with 35-40 persons were alleging illegal practices of canvassing against each other in violation of the Model Code of Conduct. It is also alleged that in violation of the Model Code of Conduct the FIR of this case is being registered. The statements of the witnesses which have been recorded by the investigating officer as are emerging from the case-diary would also reveal that allegations and counter allegations against the representatives of two political parties have been alleged.

9. The issue, as to what is the duty of the court, at the stage of framing of charge, is now no more res-integra and the same has been rest by catena of judgments rendered by Hon'ble Supreme Court.

10. In ***State of Bihar v. Ramesh Singh MANU/SC/0139/1977 : 1977 CriLJ 1606***, 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.

11. Hon'ble Supreme Court in the case of ***State- Anti Corruption Bureau, Hyderabad and another Vs. P. Suryaprakasam reported in 1999 Supreme Court Cases (Cri) 373*** has held as under:

"5. we are constrained to say that the settled law is just the reverse of what the High Court has observed in the above-quoted passage as would be evident from even a cursory reading of Sections 239 and 240 Cr.P.C., which admittedly govern the case of the respondent. According to the above sections, at the time of framing of a charge what the trial court is required to, and can, consider are only the police report referred to under Section 173 Cr.P.C. and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that....."

12. Hon'ble Supreme Court in the case of ***State of Delhi Vs. Gyan Devi and others (2008) 8 Supreme Court Cases 239***, held as under:

"7. The legal position is well settled that at the stage of framing of charge the Trial Court is not to examine and assess in detail the material 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. At the stage of charge the Court is to examine the materials only with a view to be satisfied that a prima facie case of commission of

offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C. seeking for the quashing of charge framed against them the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and no rare occasions. It is to be kept in mind that once the Trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases."

13. Hon'ble Supreme Court in the case of ***Sajjan Kumar Vs. Central Bureau of Investigation (2010) 9 SCC 368*** has held as under:

20. It is also clear that in exercising jurisdiction under Section 227 of Cr.P.C., the Magistrate should not make roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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 discloses 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.

14. Hon'ble Supreme Court in the case of ***State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568*** has held as under:

6. At the stage of framing charge, the trial court is required to consider whether there are sufficient grounds to proceed against the accused. Section 227 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228. ..

7. Similarly, in respect of warrant cases triable by Magistrates, instituted on a police report, Sections 239 and 240 of the Code are the relevant statutory provisions. Section 239 requires the Magistrate, to consider 'the police report and the documents sent with it under Section 173' and, if necessary, examine the accused and after giving accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording reasons thereof.

8. What is to 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 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.

9. Further, the scheme of the Code when examined in the light of the provisions of the old code of 1898, makes the position more clear. In the old code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207(a) was fairly lengthy. Section 207, inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207(a). Under Section 207(a) in any proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under Sub-section (1),

to take evidence as provided in Sub-section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in Sub-section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in Sub-section (6) and to commit the accused for trial after framing of charge as provided in Sub-section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in Sub-section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in Sub-section (14). The aforesaid Sections 207 and 207(a) have been omitted from the Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the Code with the object of expeditious disposal of cases. Instead of committal Magistrate framing the charge, it is now to be framed by Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the code is also required to be kept in view while determining the question. Under the Code, the evidence can be taken only after framing of charge."

Thereafter Honble Apex Court by referring to the ratio laid down in State of Bihar v. Ramesh Singh MANU/SC/0139/1977 : 1977CriLJ1606, State of Delhi v. Gyan Devi and Ors. MANU/SC/0649/2000 , State of Madhya Pradesh v. S.B. Johari and Ors. MANU/SC/0025/2000 : 2000CriLJ944 State of Maharashtra v. Priya Sharan Maharaj and Ors. MANU/SC/1146/1997: 1997CriLJ2248 and State Anti-Corruption Bureau, Hyderabad and Anr. v. P.

Suryaprakasam 1999 SCC (Cri.) 373 wherein the 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 and also held that the charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, can not show that the accused committed the particular offence. In that case, there would be no sufficient ground for proceeding with the trial and at the stage of framing of charge there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The above mentioned decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be well settled proposition. This aspect, however, has been adverted to in where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. The Supreme Court further held that judgment of the High Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had

commenced was reversed by the Supreme Court.

It was thus concluded that at Sections 227 and 228 stage 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. 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.

15. Hon'ble Supreme Court in the case of ***State of Supt. And Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and others (1979) 4 SCC 274*** has held as under:-

"18. It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had therefore, to consider the above question on a general consideration of the materials placed! before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh MANU/SC/0139/1977 : 1977CriLJ1606 , the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the CrPC, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of the offence."

16. Hon'ble Supreme Court in the case of **State of Tamil Nadu Vs. N. Suresh Rajan and others (2014) 11 SCC 709** has held as under:-

"The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused.

31.1 Under Section 227 of the Code, the trial Court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction".

31.2 Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3 Thus, there is difference in the language employed in these

provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the Court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in the case of R.S. Nayak v. A.R. Antulay MANU/SC/0198/1986 : (1986) 2 SCC 716. The same reads as follows:

43...Notwithstanding this difference in the position there is no scope for doubt that the stage at which the magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial Court is satisfied that a prima facie case is made out, charge has to be framed."

17. The aforesaid legal position is sufficient to infer that the duty of court at the stage of framing of charge is to see prima facie case, in view of the material/evidence available on record and the material/evidence is not required to be appreciated as required at the end of the trial court and the requirement of prima facie case is only for the proceeding of the case further and not for conviction.

18. When the applicants had approached this court by filing application under section 482 CrPC the same was disposed of with a direction that if any discharge application is filed by the applicants through counsel that has to be disposed of by passing a reasoned and speaking order. The impugned order, by which the discharge application moved by the applicants has been dismissed, cannot be inferred as reasoned and speaking order. The trial court has not considered the grounds taken by the applicants in their discharge application. Even the trial court has not considered the ingredients of the offences wherein the charge could be framed against the

applicants.

19. Thus, *prima facie*, I find substance in the submission made by the learned counsel for the applicants that the trial court has not taken pains to discuss the material/evidence which is available on record and simply by mentioning the case law discharge application has been dismissed while the duty of trial/special court was to sift the material/evidence in order to assess as to what offence has been committed by the applicants wherein the charges may be framed. Thus, the impugned order dated 21.12.2023 appears to have been passed without application of judicial mind and may not stand the scrutiny of law and is liable to be set-aside.

20. Having regard to all the facts and circumstances of the case and for reasons stated above, the impugned order dated 21.12.2023 is ***set-aside***. The matter is remanded back to the trial court and the trial court is directed to pass a fresh order after providing an opportunity of being heard to the parties, strictly in accordance with law referred herein above, by a reasoned and speaking order.

21. It is further provided that till disposal of the discharge application of the applicants afresh, the applicants may appear before the trial court through their counsel.

22. This application moved under section 482 CrPC is, thus, **allowed**.

23. Let the case diary be returned to the learned A.G.A immediately.

Order Date :- 6.3.2024

MVS/-