

Court No. - 14

Case :- CRIMINAL REVISION No. - 1390 of 2024

Revisionist :- Sanat Kumar Srivastva

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

Counsel for Revisionist :- Ashok Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri A.K. Shukla, learned counsel for the revisionist and learned A.G.A. for State-opposite party No.1 and perused the entire record.

2. In view of the order, which is proposed to be passed today, notice to opposite party No.2 is hereby dispensed with.

3. By means of instant revision, a challenge has been made to order dated 19.10.2024 passed by learned First Additional Chief Judicial Magistrate, Raebareli in Case No.433/2006 arising out of Case Crime No.617 of 2004, under Sections 409, 420, 467, 468, 471, 427 I.P.C., Police Station Harchandpur, District Raebareli, whereby the application seeking discharge by the revisionist under Section 239 Cr.P.C. has come to be rejected by learned trial court.

4. Learned counsel for the revisionist has submitted that a first information report came to be lodged against the revisionist by the first informant as Case Crime No.617 2004, under Section 409 I.P.C.at Police Station Harchandpur, District Raebareli, which is based on false and fabricated facts. Upon conclusion of investigation, charge sheet came to be submitted for the offence under Sections 409, 420, 467, 468, 471, 427 I.P.C. without there being any evidence whatsoever against the revisionist.

5. His further submission is that an application

seeking discharge came to be rejected by the learned trial court vide impugned order dated 19.10.2024 in a mechanical manner and without applying its judicial mind. The learned trial court did not take care of the fact that no ingredients which constitute offence under Sections 409, 420, 467, 468, 471, 427 I.P.C. is made out against the revisionist.

6. His next submission with vehemence is that the provisions contained in Section 227 Cr.P.C. in respect of discharge in sessions trial and Section 239 Cr.P.C. regarding discharge in warrant trial, are substantially similar. This fact has been reiterated by the Hon'ble Apex Court in **Asim Shariff vs. National Investigation Agency reported in (2019) 7 SCC 148** in para-18. Therefore, having regard to this settled legal position, the learned trial court was bound to sift evidence in limited manner to ascertain as to whether any offence is made out against the applicant or not.

7. His further submission is that the application seeking discharge under Section 239 Cr.P.C. came to be disposed of by means of cryptic order without assigning any reason therefor. The submission is that though charge can be framed on the basis of strong suspicion, however, the fact that the material available during investigation was prima facie sufficient to frame charge as to be reflected from the order impugned.

8. His next submission is that the learned trial Court, while passing the impugned order, has failed to appreciate that the learned trial court was competent to sift evidence for a limited purpose of ascertaining as to whether any offence, prima facie, is made out against the revisionist or not. Therefore, the impugned order is liable to be quashed.

9. Per contra, learned A.G.A. has vehemently opposed the prayer. However, he has very fairly

submitted that it was, at least, incumbent on learned trial court to have, prima facie, examined the material so as to come to conclusion that what offence(s) is made out against the revisionist on the basis of prosecution evidence collected during the investigation.

10. Having heard learned counsel for the revisionist, learned A.G.A. for the State and upon perusal of the record, it appears that a first information report came to be lodged against the revisionist by the first informant as Case Crime No.617 2004, under Section 409 I.P.C. at Police Station Harchandpur, District Raebareli. Upon conclusion of investigation, charge sheet came to be submitted against the revisionist for the offences under Sections 409, 420, 467, 468, 471, 427 I.P.C. An application seeking discharge came to be rejected by the learned trial court vide impugned order dated 19.10.2024 without even prima facie advertent to the material(s) collected during the investigation.

11. Therefore, having regard to this fact, it appears that the learned trial court failed to sift the evidence for limited purposes which was permissible to the learned trial court laid down by the Hon'ble Apex Court in **Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey and others reported in 2022 SCC OnLine SC 913** which in paras 18, 19, 20, 23, 24, 25, 26 and 27 has held as under

"18. Section 227 of the Cr.P.C. reads thus:

"227. Discharge.-

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions 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 his reasons for so doing."

19. Section 228 of the Cr.P.C. reads thus:

"228. Framing of charge.- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which- (a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claim-sto be tried."

20. The purpose of framing a charge is to intimate to the accused the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial. [See : decision of a Four Judge Bench of this Court in **V.C. Shukla v. State through C.B.I. reported in 1980 Supp SCC 92 : 1980 SCC (Cri) 695**].

23. This Court in the case of **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4**, considered the scope of enquiry a judge is required to make while considering the question of framing of charges. After an exhaustive survey of the case law on the point, this Court, in paragraph 10 of the judgment, laid down the following principles:

"(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 Judge cannot act merely as a Post office or a mouth-piece 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."

24. There are several other judgments of this Court delineating the scope of Court's powers in respect of the framing of charges in a criminal case, one of those being **Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547**, wherein the law relating to the framing of charge and discharge is discussed elaborately in paragraphs 15 and 23 resply and the same are reproduced as under:

"15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

"4..Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial 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. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. 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 against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of

deciding *prima facie* whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial?. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be 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."

25. In *Sajjan Kumar v. CBI [(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371]*, this Court had an occasion to consider the scope of Sections 227 and 228 CrPC. The principles which emerged there-from have been taken note of in para 21 as under : (SCC pp. 376-77)

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

(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."

26. The exposition of law on the subject has been further considered by this Court in **State v. S. Selvi, (2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710**, followed in **Vikram Johar v. State of Uttar Pradesh, (2019) 14 SCC 207 : 2019 SCC OnLine SC 609 : (2019) 6 Scale 794**.

27. In the case of **Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148**, this Court, to which one of us (A.M. Khanwilkar, J.) was a party, in so many words has expressed that the trial court is not

expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. We quote the relevant observations as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC 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 possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, 3 (2018) 13 SCC 455 4 (2019) 14 SCC 207 : (2019) 6 Scale 794 the trial Judge will be justified in discharging him. **It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.**

(emphasis supplied)"

12. When surveyed in the light of aforesaid settled legal position, this Court also finds that learned trial court has failed to record even a prima facie satisfaction as to what specific offence(s) is made out against the revisionist on the basis of material available before it. Though the fact remains that at this stage, learned trial court has not to undertake meticulous examination of evidence, it is also not expected to undertake roving enquiry or hold a mini trial. Nevertheless, in view of law laid down by the Hon'ble Apex Court in **Ghulam Hassan Beigh's case (supra)**, it was expected to at least record prima facie satisfaction as to under which section(s), offences are made out against the revisionist on the basis of material available before it. This aspect clearly lacks in the impugned order dated 19.10.2024 passed by the learned First Additional Chief Judicial Magistrate, Raebareli related with Case Crime No.617 2004, under

Sections 409, 420, 467, 468, 471, 427 I.P.C. at Police Station Harchandpur, District Raebareli.

13. It is also needless to mention that reasons are **soul** of any order which affects rights of any accused in a criminal trial. Bare perusal of impugned order, reflects that it is bereft of any reason whatsoever. It is true that learned trial court can proceed to frame charge or may come to the conclusion that there is sufficient material to frame charge on the basis of material collected during the investigation but, of course, by advertent to the aforesaid such material. However without referring to any such material(s) available, coming to the conclusion that such material(s) is sufficient to proceed to frame charges, cannot be said to reflect any reason for passing such order.

14. Thus, in view of what has been discussed above, the impugned order dated 19.10.2024 passed by the learned First Additional Chief Judicial Magistrate, Raebareli related with Case Crime No.617 2004, under Sections 409, 420, 467, 468, 471, 427 I.P.C.at Police Station Harchandpur, District Raebareli, cannot be sustained which deserve to be set aside and is, accordingly, set aside insofar as the same relates to the present revisionist only with a direction to learned trial court to dispose of the application seeking discharge afresh, by means of a speaking and reasoned order strictly, in accordance with law with utmost expedition without granting any unnecessary adjournment to the present revisionist, who is an accused in the trial which is pending since 2010.

15. With the aforesaid observations/directions, the instant revision stands finally **disposed of**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 19.11.2024/Shubhankar