



2026:AHJ:98712

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1007 of 2022

Kapil Kumar

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Amit Kumar Srivastava
Counsel for Respondent(s)	:	Dr. Kamlesh Kumar, G.A., Kamla Dinkar, Shilpa Ahuja

Court No. - 51

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Amit Kumar Srivastava, learned counsel for the appellant and the learned A.G.A. for the State. Despite the fact that names of two counsels on behalf of opposite party no.2 have been shown in the cause list but no one appears on his behalf even in the revised reading of the list.

2. This criminal appeal under Section 14 (A) (1) of S.C./S.T. Act has been preferred by the appellant for quashing the order dated 19th January, 2022 passed by the Additional Sessions Judge/Special Judge (S.C./S.T. Act), Amroha in Sessions Case No. 429 of 2020 (State Vs. Bhagwan Singh & Others) arising out of Case Crime No. 102 of 2018 under Section 302 and 201 I.P.C. and Section 3 (2) (v) of S.C./S.T. Act, Police Station-Amroha Dehat, District-Amroha, whereby the discharge application filed by the appellant has been rejected.

3. The relevant facts are that as per the informant/opposite party no.2 that his father, namely, Sheeshpal (deceased herein) had gone from his house on 6th June, 2018. The deceased Sheeshpal was found in injured condition by the Police on 7th June, 2018 on the passersby and he was admitted in district hospital. During treatment, the deceased died on 7th June, 2018 and inquest of his dead body was conducted by the Police on 7th June, 2018 at Police Station-Civil Lines as unknown person. The post-mortem of the deceased was also conducted on 8th June, 2018 as unknown person. Thereafter a first information report was lodged by opposite party no.2 on 8th June, 2018 at 21:59 o'clock alleging therein that his father had gone with the appellant and other accused persons on 6th June, 2018 and in that regard a Tehrir was given by him at 08:00 a.m. before the Station House Officer, Police Station-Amroha Dehat. The opposite party no.2 along with villagers started searching and during that course, the opposite party no.2 came to know about an

unidentified dead body. After seeing the same, it was found by the opposite party no.2 that he was his father. In the first information report, it is further alleged that after killing his father, the accused persons tried to give a colour to the said accident as a case of road accident. It is then alleged that the opposite party no.2 tried to enquire about the death of his father, he was abused and threatened by the accused persons by using caste indicated words. The said first information report has been registered against the appellant and other two persons, namely, Gajendra and Bhagwan Singh, as Case Crime No. 0102 of 2018 under Sections 302, 201 I.P.C. and 3 (2) (v) of the S.C./S.T. Act, Police Station-Amroha Dehat, District-Jyotibaphulyabainagar.

4. The first statement of the informant/opposite party no.2 was recorded by the Police under Section 161 Cr.P.C. on 9th June, the second on 8th July, 2018 and the third on 7th October, 2018. As per the case of the appellant, there is variations in all the statements of the first informant/opposite party no.2 recorded under Section 161 Cr.P.C. After investigation, the charge-sheet was submitted by the Police on 26th August, 2020. Thereafter on 15th October, 2021, one of the accused persons, namely, Gajendra Singh who is father of the appellant including the appellant approached the National Human Rights Commission for further investigation, on that, the National Human Rights Commission has passed an order giving the matter for further investigation to a Special Investigation Team which has submitted its report that the death of the deceased is a result of road accident and not murder. On the said report of the Special Investigation Team, further investigation was conducted and the Investigating Officer has submitted its final report on 1st November, 2021 and till date no protest petition has been filed by opposite party no.2 against the said final report. After submission of the said final report, the appellant filed a discharge application under Section 227 Cr.P.C. before the Special Judge (S.C./S.T. Act) Amroha in Special Sessions Trial No. 429 of 2020, which has been rejected by the trial court vide order 19th January, 2022. It is against this order that the present criminal appeal has been filed.

5. In the discharge application, it has been stated by the appellant that the appellant has not committed any crime. From the outset, the further investigation proved the death of the deceased is due to road accident and not murder. He claims that the statements of Constables Munir Khan, Zaidi, Sohanveer, and Monu Malik clearly indicate that the deceased was met with an accident and smell of alcohol was coming out from his mouth. Dr. Iqbal also stated that the deceased's injuries were likely caused by a road accident. Dr. Abhishek Kumar Varshney, who conducted the post-mortem, also attributed the injuries to the deceased to a road accident. Investigating Officer

Sudesh Kumar collected statements from independent individuals in the village, which revealed that the deceased, Sheeshpal, was an alcoholic and that his death was a road accident. However, after his transfer, Investigating Officer Siddharth filed a charge sheet against him without gathering any additional evidence. After release of the appellant on bail, a Special Investigation Team was formed on the appellant's application. Upon thorough investigation, it was found that the previous investigation contained significant deficiencies. There are contradictions in the statements of the informant's witnesses. The Special Investigation Team found no prima facie direct or circumstantial evidence against the appellant and the other accused in connection with the incident of the deceased. Upon the recommendation made by the Special Investigation Team, the investigation was transferred to Circle Officer, Nagina, who found no prima facie evidence on the points indicated by the Special Investigation Team and concluded that the deceased, Sheeshpal, died due to injuries sustained in the road accident. It is further stated that the medical expert's opinion, the post-mortem report, the inquest, the statements of the witnesses and the location of the accused including the appellant in the Call Detail Reports do not constitute a prima facie case against them. Therefore, the appellant is liable to be discharged from the said case.

6. The contentions of the learned counsel for the appellant:

(i) As per the statements of independent witnesses and Doctor, the probable cause of death of deceased was due to road accident, despite that a false story of murder has been created, as the the present case is an accident which has unnecessarily malafidely been given colour of murder at the belated stage, which is not supported by any evidence available on the record.

(ii) None of the witnesses has assigned any motive to the appellant for committing the murder of deceased as there was no enmity between the parties hence it appears that in order to extract money from the appellant as from the State exchequer prosecution against the appellant has been initiated by the Opposite Party No.2. Prior to the lodging of First Information Report ,the brother of Opposite Party No.2 has given a missing report at Police Station Amroha Dehat regarding the missing of his father without levelling any allegation against the appellant and other accused, which shows that the Information Report has been lodged as a result of afterthought and in malafide manner.

(iii) While passing impugned order, the trial court has not considered the provisions of Section 227 of Cr.P.C. in letter the and impugned order spirit and passed without applying his judicial mind.

(iv) There is neither any direct nor any circumstantial evidence against the appellant to implicate him in the present case, despite that the discharge application filed by him has been rejected by the learned Trial court on the basis of surmises and conjectures.

(v) After further investigation the Investigating Officer came to the conclusion that prima-facie no offence under Sections 302, 201 I.P.C. and section 3 (2) v of S.C./S.T. Act is made out against the appellant and the co-accused.

(vi) While passing the impugned order learned Trial court has not considered the final report and report of S.I.T. submitted in the present case which is wholly illegal and therefore not sustainable in the eye of law.

7. To buttress the aforesaid submission learned counsel for the appellant submits that even though the appellant in his application filed for discharge has mentioned about the final report submitted, after further investigation on the recommendation of the Special Investigation Team but the trial court has ignored the said fact, which is per se illegal. The trial court while passing the impugned order should have considered the charge-sheet and the final report submitted in the present case conjointly as is held by the Hon'ble Supreme Court of India in the case of **Vinay Tyagi Vs. Irshad Ali @ Deepak** reported in *LAWS (SC)-2012-12-47*, which has been relied upon in the another judgment of the Hon'ble Supreme Court of India in the case of **Luckose Zachariah @ Zak Nedum-chira Luke & Others** reported in **2022 (2) JIC 135 (SC)**. On the cumulative strength of the aforesaid, learned counsel for the appellant submits that since the impugned order suffers from manifest error of law and highly perverse in nature, hence the same is liable to be quashed by this Hon'ble Court.

8. On the other-hand, learned A.G.A. has opposed the submissions made by the learned counsel for the appellant by contending that the trial court while passing the impugned order has not committed any gross error in rejecting the application of the appellant under Section 227 Cr.P.C. for discharge as prima facie case has been made out against the appellant and other accused. On the above premise, learned A.G.A. submits that since there is no illegality or infirmity in the order impugned, the present criminal appeal is liable to be dismissed.

9. I have considered the facts and circumstances of the case, submissions made by the learned counsel for the appellant, learned A.G.A. for the State and perused the materials available on record including the order impugned.

10. This Court while carefully perused the impugned order, finds that though the appellant in his application under Section 227 Cr.P.C. for discharge has

mentioned the fact that after further investigation on the recommendation of the Special Investigation Team, final report has been submitted by the Circle Officer, Nagina as he has not found any prima facie evidence or case against the appellant and other accused but the trial court while passing the impugned order has not recorded any finding on the final report submitted in the present case. The trial court has only on the basis of evidence available on the charge-sheet submitted earlier by the Investigating Officer, passed the impugned order rejecting the application of the appellant under Section 227 Cr.P.C.

11. The Hon'ble Supreme Court of India in the case of **Vinay Tyagi (Supra)** in paragraph nos. 21 and 22 has observed as follows:

*"21. Having discussed the scope of power of the Magistrate under Section 173 of the Code, now we have to examine the kind of reports that are contemplated under the provisions of the Code and/or as per the judgments of this Court. The first and the foremost document that reaches the jurisdiction of the Magistrate is the First Information Report. Then, upon completion of the investigation, the police are required to file a report in terms of Section 173(2) of the Code. It will be appropriate to term this report as a primary report, as it is the very foundation of the case of the prosecution before the Court. It is the record of the case and the documents annexed thereto, which are considered by the Court and then the Court of the Magistrate is expected to exercise any of the three options afore-noticed. Out of the stated options with the Court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. The power of the magistrate to direct 'further investigation' is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the Court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. **Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.***

22. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the Court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the Court shall discharge an accused in compliance with the provisions of Section

227 of the Code."

12. Relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Vinay Tyagi (Supra)**, the another Division Bench of the Hon'ble Supreme Court of India in the case of **Luckose Zachariah @ Zak Dedumchira Luke (Supra)** in paragraph no. 16 has held as follows:

"16. In view of the clear position of law which has been enunciated in the judgments of this Court, both in Vinay Tyagi (supra) and Vinubhai Haribhai Malaviya (supra), it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173 (2) as well as the supplementary report which was submitted after further investigation in terms of Section 173 (8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence. While the High Court has relied upon the decision in Vinay Tyagi (supra), it becomes necessary for this Court to set the matter beyond any controversy having due regard to the fact that the Sessions Judge in the present case had while remitting the proceedings back to the Magistrate relied on the judgment of the Single Judge of the Kerala High Court in Joseph (supra) which is contrary to the position set out in Vinay Tyagi. Hence, the JFCM – I Alappuzha shall reexamine both the reports in terms of the decisions of this Court in Vinay Tyagi vs. Irshad Ali alias Deepak and Vinubhai Haribhai Malaviya vs. State of Gujarat as noted above and in terms of the observations contained in the present judgment. The Magistrate shall take a considered decision expeditiously within a period of one month from the date of the present order."

13. In view of the aforesaid settled legal position of law, this Court finds that even though the trial court has all aware of the fact that after submission of the charge-sheet, a further investigation has been conducted in the instant case and final report has also been submitted by the Circle Officer, Nagina. However, the trial court has ignored the final report submitted in the instant case while passing the impugned order rejecting the discharge application of the appellant. As per the above settled law, the trial court should have conjointly considered the charge-sheet and the final report and after examining the evidence and material available in the charge-sheet and the final report, should have passed the impugned order. But the said exercise has not been done by the trial court while passing the impugned order.

14. Consequently, this Court is of the considered opinion that the impugned order cannot be legally sustained and is liable to be set aside.

15. Accordingly, order dated 19th January, 2022 passed by the Additional Sessions Judge/Special Judge (S.C./S.T. Act), Amroha in Sessions Case No. 429 of 2020 (State Vs. Bhagwan Singh & Others) arising out of Case Crime No. 102 of 2018 under Section 302 and 201 I.P.C. and Section 3 (2) (v) of S.C./S.T. Act, Police Station-Amroha Dehat, District-Amroha is set aside.

16. The trial court is directed to consider and decide the discharge application

filed by the appellant under Section 227 Cr.P.C. afresh in light of the law laid down by the Hon'ble Supreme Court of India in the above mentioned case as well as in light of the observations made herein above, by means of a reasoned speaking order, preferably within a period of two months from the date of production of a certified copy of this order, without granting any unnecessary adjournments to either of the parties, if there is no other legal impediment.

17. The present criminal appeal is allowed subject to the observations/directions made herein above.

April 30, 2026
Sushil/-

(Madan Pal Singh,J.)