

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO.71 OF 2015

MR. TIKA BAHADUR BHANDARI,
s/o Ravilal Bhandari,
age 35 years, married,
service, Nepal National,
presently residing at
Near Ganesh Temple, Dhauji,
Old Goa, Tiswadi-Goa
and native of Bhandari Thar Village,
Ward No.2, Pakhapani Gabisa,
Post Simley, District Parbot, Zone
Dhawalagiri, West Nepal,
Nepal. .. Applicant

Versus

State of Goa,
through the Public Prosecutor,
having office at High Court,
Panaji. .. Respondent

Mr. Shivan Dessai and Mr. J. Ramaiya, Advocates for the Applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondent.

CORAM :- S. B. SHUKRE, J.

DATE : 27th January, 2016.

ORAL JUDGMENT :

Heard. Admit.

2. Learned Public Prosecutor waives service of notice for

the respondent.

3. Heard finally, by consent.

4. This Revision Application challenges the order dated 18/06/2015 passed in Sessions Case No.19/2012 by Sessions Judge, Panaji thereby directing framing of charge against the revision applicant and his co-accused for offences punishable under Section 392 and 302 of I.P.C. read with Section 34 of I.P.C.

5. Learned Counsel for the applicant submits that there is not even an iota of evidence to prima facie make out the offences alleged against the applicant. He submits that it is well settled law that if the material collected during the course of investigation, taken at its face value, does not reveal commission of any offence or does not establish the basic ingredients of the offence alleged against the accused, the accused has to be discharged under Section 227 of the Code of Criminal Procedure. He also submits, relying upon the cases of ***State of U.P. Vs. Dr. Sanjay Singh and another***; 1994 Supp (2) SCC 707 and ***Yogesh @ Sachin Jagdish Joshi***; (2008)10 SCC 394 that if the evidence produced gives rise to suspicion only and is distinct from grave suspicion, the accused would be entitled to seek discharge from

the case. He points out from the impugned order that the learned Judge has directed framing of charge only on suspicion and not on grave suspicion. Therefore, according to him, the applicant deserves to be discharged from the case.

6. Shri Rivankar, learned Public Prosecutor submits that at this stage, there is no material justifying interference with the impugned order. He submits that statements of witnesses, particularly the statements of Tripurari Dube and Suresh Mishra prima facie show that this applicant was present at the spot of incident when the incident took place and his presence there could be seen as the circumstance of his being lastly seen in the company of the deceased. Therefore, he submits that a grave suspicion against the applicant arises in the present case and as such, there are sufficient grounds for proceeding further in the case against the applicant.

7. I would have accepted the contentions of learned Public Prosecutor for the State had there been some material collected during the course of investigation prima facie showing that the applicant was lastly seen in the company of the deceased or some circumstances, as for example presence of blood stains on the clothes of the applicant, connecting him with the crime, but,

on perusal of the complaint as well as the statements of witnesses including the panchanama, I find that no such a conclusion as regards the applicant being prima facie seen lastly together with the deceased or existence of some circumstances linking the applicant with the crime could be made.

8. From the complaint dated 25/01/2012 and scene of offence panchanama dated 26/01/2012, prima facie, it can be made out that the dead body of the victim was lying inside the premises the main gate of which was locked from outside. These, two documents also prima facie suggest a possibility that this applicant was stationed outside the main gate and since he noticed blood stains near the main gate which was locked from outside, he made a phone call to the complainant and possibly also to police informing them of something that had gone wrong. They further show that when the complainant and police reached the scene of offence, the main gate was locked from inside and since the keys of the main gate could not be found, it was required to be cut open and thereafter entry by the police personnel and other persons was gained within the premises. It was only after gaining access inside the premises that the dead body of the victim was noticed as lying near the reception counter. It is significant to note here that the complainant, Mr. Camilo D' Sa had left the Museum at

about 5.40 p.m. and he was the Administrator of the Museum. Being Administrator, he must have known as to who had locked the main gate and where the keys of the main gate were kept or who had retained them. It appears that no investigation whatsoever in this direction has been made. So, the question that has so far remained unanswered is as to how the dead body of the victim was found inside the premises which was locked from outside and who had gained entry inside the premises by opening the lock. This would only show that even no suspicion could be raised about the applicant being seen lastly in the company of the victim at any point of time.

9. Statements of witnesses i.e. Tripurari Dube and Suresh Mishra also do not throw any light on the issue of last seen theory. They only show that this applicant was present for night duty at the Musuem from 6.00 p.m. onwards on 25/01/2012 and that he had called one Abhay Dube to inform him about the presence of blood stains. Tripurari Dube has stated that on being requested by Abhay Dube, he called up on the mobile phone of the victim only to find that the call went unanswered. He states that thereafter, he called the applicant who told him that phone of Uncle "Luis" i.e. the victim was ringing inside the Museum premises. Such statements obviously would not throw any light

upon whether this applicant at the relevant time was at the scene of offence i.e. inside the premises, whether he was lastly in the company of Luis or whether he went there after the victim was killed.

10. There is also no other circumstantial evidence collected by police during investigation which would raise any grave suspicion against the present applicant. No blood stains have been noticed or found during analysis by the Chemical Analyser on the clothes worn by this applicant at the relevant time.

11. These aspects of the case, it appears, have not been considered by the learned Sessions Judge. The learned Sessions Judge has found that a strong suspicion arises with regard to involvement of the applicant in the offences alleged against him. But, the observation is not supported by material present on record. The order directing framing of charge against the applicant is, therefore, illegal having been based upon no material and deserves to be quashed and set aside. For these observations, I would like to draw support from the cases in ***Yogesh @ Sachin Joshi*** and ***Dr. Sanjay Singh*** (supra) referred to earlier.

12. In the circumstances, Revision Application is allowed. The impugned order is quashed and set aside. The applicant is discharged from the case.

13. At this stage, learned Public Prosecutor seeks permission of the Court to file a fresh chargesheet if new material warranting filing of the chargesheet is collected by the police.

14. Investigating Agency would always have liberty to make further investigation into the entire case and to take such appropriate action as would be permissible under the law.

SMA

S. B. SHUKRE, J.