

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.741 OF 2016

- . Narayan s/o.Appasaheb Chalge
Age: 50 years, Occu.: Business and
Agriculture, R/o.Shrikrishna Nagar,
Jalna, Taluka and District: Jalna. **..Petitioner**

Versus

- 1) The State of Maharashtra
Through the Assistant Police Inspector,
Taluka Jalna Police Station, Jalna,
District Jalna.
- 2) Akash s/o. Gopal Sharma
Age: 27 years, Occu.: Education,
R/o.Shikshak Colony, New Mondha Road,
New Jalna, Tq. & Dist.Jalna. **..Respondents.**

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Advocate for petitioner: Mr.R.S.Deshmukh
APP for respondent No.1: Mr.G.O.Wattamwar
Advocate for respondent No.2: Mr.S.S.Choudhari

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CORAM : PRAKASH D.NAIK, J.
DATED : 07.11.2017

JUDGMENT :-

- 1) The petitioner has preferred this petition and
prayed for setting aside the order dated 16.5.2016,
passed by the learned Additional Sessions Judge-2,

Jalna below Exhibit-39 in Sessions Case No.34 of 2015.

2) The petitioner had preferred an application for discharge before the Court of Sessions, Jalna vide Exh.39, which has been rejected by order dated 16.5.2016. The said order rejecting the application for discharge preferred by the petitioner under Section 227 of the Code of Criminal Procedure, 1973, is under challenge in this petition.

3) The prosecution's case in brief is as follows:-

On 11.2.2014, Mr.Akash Gopal Sharma, respondent No.2 lodged a complaint with Jalna Police Station. In the said complaint, it was alleged that on the same day at about 12:00 noon, the complainant and his father had been to Hanuman Temple, which is situated near Bhokardan Chauhuly Road, Jalna. After offering prayers, the complainant alone returned back home and again returned to the said Temple within 10 minutes. At that time, he saw his father lying on the ground in injured condition.

The landlord - Gopal s/o.Narayan Avadhoot was standing near the injured person. He was holding a sword. When the informant reached the spot, Gopal Narayan Avadhoot fled away in Car. There were 3-4 persons, who covered their faces by clothes. Informant called Police Station. Police Inspector - Mr.Jayabhaye came to the spot and took the injured to the hospital. On examining, the Doctor declared him dead. According to the informant, there was long standing dispute between his family and the landlord - Gopal Narayan Avadhoot as well as persons namely Paras Nand, Bhayyalal Nand, Santosh alias Arya Tandale, who had threatened the informant's father and also assaulted him in the past. Since last eight days, landlord - Gopal Narayan Avadhoot was demanding vacant possession of their house, which was occupied by informant's family as tenants. Informant therefore suspected that the landlord and aforesaid persons committed murder of his father. On the basis of the complaint, a crime was registered under Section 143, 147, 148, 149 and 302 of the Indian Penal Code as well as Section 4 r/w Section 25 of the Arms Act.

It is prosecution's case that during the course of investigation, it was revealed that the petitioner is involved in the crime. It is the case of contract killing. Accused Nos.2 to 4 are contract killers. Accused No.1 engaged accused Nos.2 to 4 to commit the said crime. According to the complainant, in pursuant to the contract, accused Nos.2 to 4 have committed murder of the deceased.

4) The petitioner preferred an application for discharge before the Sessions Court on several grounds. The learned Sessions Judge, Jalna by order dated 16.5.2016 rejected the said application on the ground that prima-facie there is material on record against the petitioner and there is no ground for discharging the petitioner from the said case.

5) The petitioner's case is that he has been falsely implicated in the crime. There is no evidence to connect him in the said crime. The Sessions Court has committed

an error in rejecting the application for discharge. There is no evidence to frame the charge and prosecute the petitioner for the alleged crime. The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case. It is submitted that the first informant and others had filed an application with local Crime Branch stating that petitioner is not concerned with the said crime and the family of the deceased had no suspicion against the petitioner. It is submitted that subsequently the supplementary statement was recorded wherein petitioner's involvement was shown in commission of the said offence. The deceased was having criminal antecedents and was on inimical terms with several persons. The petitioner, therefore, submitted his representation dated 29.5.2014 to the D.I.G., Aurangabad Region, stating that he has falsely implicated in the crime. It is further submitted that evidence has been fabricated against petitioner to implicate him in the crime. The evidence is in the form of confessional statement of the co-accused, who had

allegedly implicated the petitioner. The petitioner came to be arrested after seven months from the date of crime and he was remanded to custody. The petitioner was granted bail by this Court. It is submitted that the name of the petitioner was not reflected in the First Information Report (FIR) and infact first informant had mentioned others name as assailants in the crime. In the FIR, the informant claimed to be eye-witness to the incident and did not show involvement of the petitioner. According to the prosecution, involvement of the petitioner was revealed during the course of investigation and on the basis of supplementary statement of the complainant, which was recorded after lapse of time. There is no sufficient evidence available against the petitioner to prosecute him for the said case. The supplementary statement of the informant was recorded after one month and there was no reason for him to remain silent about the involvement of the petitioner. It is submitted that the report of the S.D.P.O., Jalna, indicates that the complainant and his family members are

habitual in filing false complaints for extracting money and the fact that supplementary statement was recorded belatedly shows that the petitioner has been falsely implicated in this case. On perusal of the charge-sheet, it is apparent that there is no evidence against the petitioner. The Sessions Court has erroneously rejected the application for discharge. It is submitted that on perusal of the charge-sheet, there is no prima-facie case against the petitioner to continue the prosecution against him. The confessional statement is fabricated to implicate the petitioner. The said persons, whose confessions are relied upon, were arrested in different crime and subsequently they were also shown to be involved in the present crime. The material on record indicates the involvement of Gopal Narayan Avadhoot and others in the crime. Their names were mentioned in the FIR. However, complainant has changed his version after lapse of time and implicated the petitioner in the said crime. The statements of alleged eye-witness are concocted by the Investigating Officer. It is therefore

submitted that the petitioner may be discharged from the said case.

6) Learned counsel for the petitioner relied upon the following decisions of the Supreme Court:-

(a) Sajjan Kumar Vs. Central Bureau of Investigation, reported in 2011 AIR SCW, 3730.

(b) Dilawar Balu Kurane Vs. State of Maharashtra, reported in 2002 (2) Supreme Court Cases, 135.

7) Learned APP submitted that there is sufficient evidence to prosecute the petitioner. The case is based on the circumstantial evidence. The investigating machinery has conducted investigation and filed charge-sheet against the petitioner. There is ample evidence to prosecute the petitioner in the said crime. The grounds raised by the petitioner about false implication and fabrication of evidence cannot be considered at this stage. The Sessions Court has rightly rejected the application for discharge. The Trial Court while dealing with the application under Section 227 of the Code of

Criminal Procedure, is not expected to conduct roving enquiry and this is not the stage to appreciate the defence of the accused and therefore, there was no error in the order passed by the Sessions Court. The evidence on record in the form of the statement of the complainant, the statement of witness Roopchand alias Baba Pita Narayan Bhurewal recorded on 23.4.2014 shows the involvement of the petitioner in the crime, which cannot be brushed aside at this stage. The prosecution will lead evidence during trial to prove the case against the petitioner. Learned APP also relied upon the statement of Gopal Pita Puranlal Kabliye recorded on 14.9.2014 to support the prosecution's case. It is further submitted that the Sessions Court has rejected the application for discharge on the ground that there is evidence to frame charge against the petitioner.

8) The learned Advocate for respondent No.2 - the first informant has reiterated the submissions advanced by learned APP and submitted that the petitioner has not

made out any ground for quashing the proceedings. The learned counsel relied upon the decision of the Supreme Court in the case of *Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and ors.*, reported in **2011 ALL SCR, 2646**.

9) On perusal of the charge-sheet and the documents on record, it is apparent that there is evidence to prosecute the petitioner in the said crime. The supplementary statement of the complainant and the other evidence collected during the course of investigation, prima-facie, shows the involvement of the petitioner in the crime. The submissions advanced by the petitioner that the supplementary statement of the complainant recorded belatedly, petitioner's involvement is being disclosed after a long gap of time, the statement of the complainant is concocted and petitioner has been falsely implicated in the crime, are the grounds, which cannot be looked into at this stage. The Sessions Court has rightly rejected the application for discharge. The

Sessions Court has passed the order in consonance with the evidence on record and within the purview of Section 227 of the Code of Criminal Procedure.

10) It is the prosecution's case that during the investigation, involvement of the petitioner was disclosed. It is the case of contract killing wherein the service of the other accused were hired. The charge-sheet is filed against the petitioner, which contains evidence showing his involvement. The report dated 25.8.2014 submitted by S.D.P.O. which is relied upon by the petitioner to contend that the report depicts the conduct of the complainant being habitual in filing the false complaint, cannot be considered to discharge the petitioner from the said crime. Apparently, the report was in different context and no importance can be given to such report at this stage. The charge-sheet contains the statement of independent witness namely Roopchand @ Baba Pita Narayan Bhurewal in which it is stated that the petitioner—accused has called him on phone and

informed him to liquidate the deceased. The said witness refused to accede to the said request and that he was asked to suggest another contract killer to accomplish the crime. The case is also supported by other witnesses. Statements of these witnesses were recorded under Section 164 of the Code of Criminal Procedure. It is also pertinent that there is recovery of weapon and a motorbike from the possession of co-accused Satish Dolase and co-accused Shrikant Tadepkar. The part of amount allegedly involved in contract is recovered from the said accused. The admissibility of such evidence will be decided during trial. On the basis of evidence, the Trial Court has observed that there are reasonable grounds for proceeding against the petitioner. It is also observed that the delay in recording statements cannot be a ground to discharge the accused. Although, the name of the petitioner is not disclosed initially, that cannot be a ground to discharge him from the said prosecution. During the course of investigation, the involvement of the petitioner is disclosed and therefore, he was arrested as

accused in the said crime. The Trial Court had come to a conclusion that there is material on record to show petitioner's involvement and on the basis of the grounds raised in the petition, he cannot be discharged.

11) In the decisions relied upon by the learned counsel for the petitioner, the Apex Court has considered the scope of section 482 of Code of Criminal Procedure in quashing the proceedings. In the case of *Sajjan Kumar* (supra), the Supreme court has observed that while considering the question of framing of charges under Section 227 of Code of Criminal Procedure, the Court has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not the prima-facie case against the accused has been made out. The test to determine the prima-facie case would naturally depend upon the facts of each case. Where the material placed before the Court discloses grave suspicion against the accused. The Court will be justified in framing a charge and proceeding in the trial. The Court cannot act

merely as a post office or 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. However, at this stage, there cannot be a roving enquiry to look into the pros and cons of the matter and weigh the evidence as if the Court is conducting trial. If on the basis of 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 the reasonable doubt that the accused has committed the offence. At the time of framing of the charges, the probative value of the material on record cannot be gone into, but 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. At this stage, the Court is required to evaluate the material and documents on record with a view to find out if 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 at the initial stage to accept prosecution's case as gospel truth and if two views are possible and one of them give rise to suspicion only, as distinguished from the grave suspicion, the Trial Court is empowered to discharge the accused and is not required to see whether the trial will conclude in conviction or acquittal.

12) In the present case, the petitioner's submission is that the case against the petitioner does not make out grave suspicion and there is no evidence to frame charge against the petitioner. Evidence at the most raising suspicion, which is not grave and therefore, the Court was empowered to discharge the petitioner.

13) The submission of the learned counsel for the petitioner deserved to be rejected in the facts and circumstances of the present case. In the same judgment, the Supreme Court has observed that there cannot be a

roving enquiry into the pros and cons of the matter and weigh the evidence as if the Court was conducting the trial, and that on the basis of material on record, the Court could form opinion that the accused might have committed offence, then the charge can be framed.

14) Applying the said test, the evidence on record, which is referred to herein above is sufficient to frame charge against the petitioner. The other decision in the case of *Dilawar Balu Kurane (supra)* relied upon by the petitioner, was referred to by the Supreme Court in the aforesaid decision. The Supreme Court has reiterated the same principle. In paragraph no.12 of the said decision, it is observed as follows:-

"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

15) Considering the evidence on record and while appreciating the observations of the Supreme court quoted herein above, I do not find that the petitioner had made

out a case for quashing and setting aside the order of the learned Additional Sessions Judge.

16) It would be appropriate to consider the observations of the Supreme Court in the case of *Padal Venkata Rama Reddy @ Ramu* (supra), which is placed for the consideration by the learned counsel for the respondent No.2. The Supreme Court has considered catena of decisions of the Supreme Court for quashing the proceedings and has observed in paragraph No.24 as follows:-

"24. At this moment, Mr.Altaf Ahmed, learned senior counsel, by pointing out that even if the above mentioned materials are acceptable, however, the same does not constitute "legal evidence" to proceed with the trial and hence the High Court was justified in quashing the same for which he relied on a decision on this Court in *M/s.Zandu Pharmaceutical Works Ltd. [2004 ALL.MR. (Cri.) 3462 (SC)]*. In that decision, the factual position highlighted therein goes to show that the complainant had not come to the Court with clean hands. There was no explanation whatsoever

for the inaction between 1995 to 2001. Considering the factual position that the complaint was nothing but sheer abuse of process of law and the High Court has to exercise its power under Section 482, this Court after finding that the High Court has failed to exercise such power quashed the proceedings initiated by the complainant. On going through the factual position, we have no quarrel about the proposition laid down and ultimate order of this Court. That is not the position in the case on hand. We have already pointed out various principles and circumstances under which the High Court can exercise inherent jurisdiction under Section 482. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of

justice were set out in detail in *State of Haryana Vs. Bhajan Lal [1992 Supp.(1) SCC, 335]*. The powers possessed by the High Court under Section 482 are very wide and at the same time the power required great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. The statement of witnesses made on oath to be verified in full and materials put forth in the chargesheet ought to be taken note of as a

whole before arriving any conclusion. It is the material concluded during the investigation and evidence led in Court which decides the fate of the accused persons."

17) In the facts and the circumstances enumerated herein above, I find that the reasons assigned by the Trial Court are correct and interference in the said order is not warranted. No case is made out to exercise the powers of this Court and accept the prayers in the present petition. The petitioner has not made out any ground for quashing the impugned proceeding or for discharging him from the said case by setting aside the order passed by the Trial Court. Hence, I pass the following order:-

ORDER

(I) Criminal Writ Petition No.741 of 2016 is dismissed.

(II) The opinion expressed by this Court in the present petition is prima-facie opinion for considering the prayers made in this petition and the Trial Court shall not be influenced by the same during the trial.

[PRAKASH D.NAIK, J.]