

CRIMINAL REVISION APPLICATION NO. 230 OF 2017

The State of Maharashtra through DCB CID Unit-II	...	Applicant
vs.		
Narendra Goel	...	Respondent

Mr. Raja Thakare, Spl. P.P. a/w. Mr. A.R. Patil, APP for the applicant/State.

Mr. Mukesh Vays a/w. Mr. Amiy Jajoo, Mr. Victor Basu i/b. Juily R. Parab, Advocate for the respondent.

CORAM : Mrs.MRIDULA BHATKAR, J.
RESERVED ON : 4th December, 2018
PRONOUNCED ON : 21st December, 2018

P.C.

This Revision Application is filed by the State of Maharashtra through DCP, CID Unit thereby challenging the order dated 14th February, 2016 passed by the learned Sessions Judge discharging accused no. 1 from the offences punishable under sections 302, 397, 452, 34, r/w. 120B of Indian Penal Code in Sessions Case No. 792 of 2016. The incident of murder of Dr. Asha Goyal has taken place on 23rd August, 2003 at Narayan Dabholkar Road, Malabar Hill, Mumbai when she was sleeping at the house of her brother

Suresh Chandra Ranchhudas Agarwal, one of the deceased-accused, on the night she was stabbed to death. She died due to shock due to injuries.

2. Initially, An Application under section 227 for discharge filed by the petitioner-accused was rejected on 29th March, 2012 by the Sessions Court. Thereafter, the order was challenged before the High Court. The present case is based on the statement of the approver and there was no compliance under section 306(4), i.e., approver was not examined before the Magistrate. The High Court directed the procedural compliance and gave liberty to the accused to move a fresh application. Thus, a fresh application was filed. The said application was allowed on 14th February, 2017.

3. The learned Prosecutor Mr. Thakare for the applicant has submitted that the accused no. 1 has tendered pardon, accused no. 2 is facing trial, accused no. 3 is dead and present respondent is accused no. 4. Hence, as on today, there are two accused before the Court, i.e., accused no. 2 and accused no. 4. He submitted that

accused no. 2 is son-in-law of deceased accused no. 3-Suresh Agarwal. Suresh Agarwal with the help of accused nos. 1, 2 and 4 has hatched conspiracy to kill his sister Asha when she was about to leave for Canada. He submitted that the statement made by the approver and is examined on oath, is before the Court. In the said statement, the approver has given details of how Mr. Agarwal took initiative in making preparation of killing Asha. He has submitted that the order passed by the learned trial Judge is erroneous because the learned Judge while passing the order has taken into account the case of the defence, which is not permitted. He submitted that the accused has taken a defence of alibi that on the night intervening 22nd and 23rd August, 2003 he was not in Mumbai and he had left on the night of 22nd August to Delhi. Learned Prosecutor has submitted that this defence needs to be scrutinized and that can be done only at the stage of trial after giving opportunity to the prosecution to verify the details. Mr. Thakkare, in support of his submissions, relied on the judgment of **State of Orissa vs. Debendra Nath Padi**.

4. The learned counsel for the defence has supported the order

of discharge passed by the learned Judge. The learned counsel has submitted that the incident took place on the night intervening 22nd and 23rd August, 2003. He has submitted that accused no. 1, approver, was arrested thereafter. He was bailed out on 15th September, 2003. When he was on bail, accused no. 1 confessed on 27th September, 2005, i.e., 2 years after he was bailed out. Pursuant to that confession, present petitioner was arrested on 1st October, 2005 and he was made accused no. 4. He was bailed out on 15th December, 2005. The learned counsel submitted that there is no evidence against the respondent/accused to frame a charge of murder. He has submitted that the statement of approver is not creditworthy as per presumption of Section 114(b) of the Evidence Act. He submitted that there are many flaws in the investigation. The Investigating officer has collected the CDR of the respondent/accused when the respondent/accused took defence of alibi because he has left for Delhi at 8 p.m. by flight from Mumbai to Delhi. He has phoned his wife before boarding the aircraft and he again phoned his wife at around 10.30 p.m. after he reached Delhi Airport. He submitted that it is a very normal behaviour of any

person to call his spouse before travelling and after reaching the destination. Moreover, according to the police, Mr. Pravin Vatsa, the employee of the respondent/accused, had travelled from Mumbai to Delhi on his ticket of that night, however, the police themselves have collected the information and found that Pravin Vatsa did not travel on that night from Mumbai to Delhi in the name of respondent/accused. Therefore, earlier investigating Agency though arrested Vatsa, they exonerated him under section 169 of Cr. P.C. Thus, there is no evidence against the respondent/accused. The learned counsel has submitted that the papers of remand filed by the police can be relied when the application is decided under section 227. The police have verified the truthfulness of the alibi of the accused and found that Pradip Vatsa have not travelled on the name of respondent/accused. The learned counsel has submitted that there is no evidence against the respondent/accused except the confessional statement of the approver which is very doubtful in the absence of any corroboration. In support of his submissions, he relied on the following cases:

- (i) Judgment of Supreme Court in the case of **Rukmini**

Narvekar vs. Vijaya Satardekar & Others., reported in (2008) 14 SCC 1.

- (ii) Judgment of Supreme Court in the case of **State of Orissa vs. Debendra Nath Padhi**, reported in (2003) 2 SCC 711.
- (iii) Judgment of Supreme Court in the case of **Nitya Dharmananda alias K. Lenin & Anr. vs. Gopal Sheelum Reddy & Anr.**, reported in (2018) 2 SCC 93.
- (iv) Judgment of Supreme Court in the case of **Rajiv Thapar & Ors. vs. Madan Lal Kapoor**, reported in (2013) 3 SCC 330.
- (v) Judgment of Supreme Court in the case of **Ashish Batham vs, State of Madhya Pradesh**, reported in (2002) 7 SCC 317.
- (vi) Judgment of Supreme Court in the case of **Balwant Kaur vs. Union Territory of Chandigarh**, reported in (1988) 1 SCC 1.
- (vii) Judgment of Supreme Court in the case of **Suresh Budharmal Kalani alias Pappu Kalani vs. State of**

Maharashtra, reported in (1998) 7 SCC 337.

- (viii) Judgment of Supreme Court in the case of **Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra**, reported in (2008) 10 SCC 394.
- (ix) Judgment of Supreme Court in the case of **Sajjan Kumar vs. Central Bureau of Investigation**, reported in (2010) 9 SCC 368.
- (x) Judgment of Supreme Court in the case of **Rukmini Narvekar vs. Vijaya Satardekar & Ors.**, reported in (2008) 14 SCC 1.
- (xi) Judgment of Supreme Court in the case of **Chonampara Chellappan vs State of Kerala**, reported in (1979) 4 SCC 312.
- (xii) Judgment of Supreme Court in the case of **Union of India vs. Prafulla Kumar Samal & Anr.**, reported in (1979) 3 SCC 4.
- (xiii) Judgment of Supreme Court in the case of **Lachhi Ram vs. State of Punjab**, reported in AIR 1967 SC 792.

- (xiv) Judgment of Supreme Court in the case of **Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence** in Criminal Appeal NO. 949 of 2018.
- (xv) Judgment of Supreme Court in the case of **Kashmira Singh vs. State of Madhya Pradesh**, reported in AIR 1952 SC 159.
- (xvi) Judgment of Supreme Court in the case of **Sarwan Singh s/o. Rattan Singh vs. State of Punjab**, reported in AIR 1957 SC 637.
- (xvii) Judgment of Supreme Court in the case of **Dinesh Tiwari vs. State of Uttar Pradesh & Anr.**, reported in (2014) 13 SCC 137.

5, On the point of considering the document than the police report, he specifically relied on the recent judgment of the Supreme Court in **Nitya Dharmananda @ K. Lenin vs Sri Gopal Sheelum Reddy** in Criminal Appeal No. 2114 of 2017 arising out of Special Leave Petition (Cri) 8279 of 2016 decided on 7th December, 2017 by

the Supreme Court.

6. I have gone through the judgments. The ratio laid down in the judgments is mostly on the point of what yardstick is to be applied while deciding the Application for discharge under section 227 of Cr. P.C. By rule of law, the documents produced by the prosecution are to be considered and relied while framing of charge. However, in certain circumstances, if any document is very valuable throwing light on the innocence of the accused, then in such case, the Court has power to allow that document to come on record and look into that. The ratio laid down in all these cases is binding and guides the Courts while deciding discharge application, however, every discharge application is to be decided in view of the facts and circumstances of each case.

7. In the case of **State of Orissa vs. Debendra Nath Padhi**, (supra), the three Judges Bench of the Supreme Court has made it clear that the documents which are produced by the accused by way of defence are not to be considered while deciding application of discharge, i.e., at the time of framing the charge. The Court has

to restrict itself to the documents relied and produced by the prosecution.

8. In the case of **Nitya Dharmananda @ K. Lenin vs Sri Gopal Sheelum Reddy** (supra), the Supreme Court has stated that :

“6. It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the chargesheet, has crucial bearing on the issue of framing of charge.

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9. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge.”

9. Perused the record, statements of witnesses especially the

statement of approver Mr. Parab recorded on 27th February, 2005. The incident of murder has taken place on the night intervening 22nd and 23rd August, 2003 at Mumbai. The approver was arrested on 2nd September, 2003. He was released on statutory bail as chargesheet was not filed within 90 days. Accused no. 1 Suresh Agarwal, the brother of the deceased expired in the year 2003 within two to three months after the incident of murder. When the accused was on bail, two years after the incident he decided to give confession. His confession was recorded on 27th September, 2005 in which he has assigned a specific role to accused no. 4, i.e., present respondent/accused. He has stated that the respondent/accused had knowledge of the conspiracy. He was part of it and he has actually participated in transporting the assailants to and fro the residence of accused no. 1 where the victim was killed. My attention was drawn to the answers given by the approver stating the reason for his disclosure. The approver had stated that he had feeling of repentance and he wanted to make his conscience clear so he informed the entire plan of killing the victim.

10. It is true that the documents of the defence of the accused

cannot be taken into account at the time of deciding the Application for discharge. Section 227 states that the record in the case and the material brought on record by the prosecution is to be taken into account. Under section 173, the report of the police is filed by way of chargesheet so as a part from the said report, if any material is brought on record by the police, it can be looked into.

11. Thus, as pointed out by the learned counsel for the respondent/accused, the remand papers in this case disclose that the police have verified whether Pradip Vatsa has travelled on that date and they found that Pradip Vatsa in fact did not travel on that day in the name of accused person. The ticket and certificate of travel issued by the said company are produced along with the remand report by way of verification by the police and Pradip Vatsa is exonerated under section 169 of Cr. P.C. as he is found unrelated to this commission of crime. The learned Sessions Judge, while discussing this issue has lost sight that the evidence of alibi is to be tested and the prosecution is to be given full opportunity. Sometimes the alibi can be planted by the intelligent accused. In the present case,

there is evidence of approver by way of confession made on oath before the Judicial Magistrate and on the other side there is document disclosing his alibi. However, this is the offence of murder and therefore, I am of the view that in view of the evidence of confession of the approver before the Court, it may be corroborated or uncorroborated at this stage, it is a material to frame charges. Hence, Revision Application is allowed.

12. The learned counsel for the respondent/accused no. 4 prays that the order passed by this Court be stayed for four weeks.

13. Learned Spl. P.P. points out that the trial Court has fixed the matter on 8th January, 2019 for framing of charge and he points out that the Supreme Court is reopening on 2nd January, 2019.

14. In view of this, the respondent/accused is getting two weeks time to approach the Hon'ble Supreme Court, hence I am not inclined to stay this order.

(MRIDULA BHATKAR, J.)