

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1938 of 2017

Tareque Ahmed

....

Petitioner

Mr. Devashis Panda, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. P.K. Mohanty, ASC

Mr. B.R. Mohanty, for informant

CORAM:

MR. JUSTICE R.K. PATTANAİK

DATE OF HEARING 22.12.2021 : DATE OF ORDER 01.02.2022

1. Instant application under Section 482 Cr.P.C. is pressed into service by the petitioner challenging the legality and judicial propriety of the impugned order dated 20.02.2017 (Annexure-1) passed in ST Case No.327 of 2016 by the learned Sessions Judge, Balasore for having held him liable to be charged under Section 302 IPC while rejecting a petition filed under Section 227 Cr.P.C. seeking discharge with a prayer to quash the entire proceeding on the grounds inter alia that it is not tenable in law.

2. In fact, the petitioner moved the learned court below to discharge him which did not find favour with and it was rejected under Annexure-1. The petitioner has been charge sheeted for an offence punishable under Section 304(II) IPC in connection with CID CB P.S. Case No.68 dated 01.12.2012 which was initially registered as Balasore Town P.S. Case No.430 of 2012, where after, he approached the learned court below for discharge. However, the

learned court below not only rejected the discharge petition but also arrived at a conclusion that the petitioner should instead be liable under Section 302 read with 34 IPC and consequently, passed the impugned order i.e. Annexure-1.

3. From the record, it is made to suggest that the petitioner was posted as IIC, Town P.S. Balasore at the relevant point of time when the FIR was lodged by the informant against him with regard to an incident which had taken place in the night of 24th/25th November, 2012 during which it was alleged that he and other police officials arrived and forcibly entered inside their house by breaking open the main gate as well as the backside door, dragged and assaulted the victims by means of lathi and after pouring kerosene, set both on fire, as a result of which, they sustained burn injuries nevertheless shifted them to DHH, Balasore and thereafter to SCB Medical College and Hospital, Cuttack. On receipt of the FIR, Balasore P.S. Case No.430 dated 26.11.2012 was registered under Section(s) 458, 323, 341, 307, 326 and 380 read with 34 IPC and investigation was taken up. Since the allegations in the FIR were primarily directed against the petitioner, the investigation was handled by a DSP but thereafter, it was taken over by the CID, CB vide PS case No.68 registered under the same offences and finally on its completion in 2016, the charge sheet was submitted against the petitioner only under Section 304(II) IPC for causing death of the victims, who while under treatment at SCB Medical College and Hospital, Cuttack, succumbed to the burn injuries. It is further suggested that initially a preliminarily charge sheet was filed on 27.04.2016 under Section 304(II) IPC against the petitioner keeping the investigation open under Section 173(8) Cr.P.C. and the final charge sheet was submitted on 09.09.2016 as no evidence could be

gathered showing any others involvement. Thereafter, at the time of framing of charge, the petitioner sought for discharge but such a plea was not accepted by the learned court below, rather, a view was expressed to the effect that sufficient ground exists to proceed against him under Section 302 read with 34 IPC. When the discharge petition was rejected under Annexure-1 with the aforesaid view, the petitioner assailing it approached this Court to get the whole of the proceeding quashed.

4. Learned counsel for the petitioner contended that the learned court below miserably failed to consider the materials on record and committed gross illegality in holding him liable under Section 302 read with 34 IPC as against a plea of complete discharge. It is further contended that the petitioner was on official duty at the time when the alleged occurrence took place with clear evidence that the victims died on account of self-immolation and to hold him liable for a charge under Section 302 IPC without assigning any reason suffers from the vice of non-application of judicial mind. Again contended that even an offence under Section 304(II) IPC or for that matter, any other offence could not prima facie be made out against the petitioner, inasmuch as, there was no any intention of causing death or causing bodily injury with the intention that it was likely to cause death or having any knowledge that such act of his was likely to cause death of the victims as against the backdrop that the deceased set themselves on fire. It is lastly contended that the petitioner had gone to the house of the informant to cause arrest and in course of events, one of the victims threatened the police party not to go ahead with it or else would set themselves ablaze which ultimately happened and for that, he cannot be held responsible but unfortunately, the learned court

below, without examining the materials on record and assigning any reason reached at a grossly erroneous conclusion that an offence under Section 302 IPC could be held liable instead of Section 304(II) IPC when a request had, in fact, been placed for discharge in full.

5. Per contra, the learned Standing Counsel contended that there is no illegality committed by the learned court below as the conclusion is based on the materials on record and therefore, impugned order under Annexure-1 is absolutely justified and hence, not liable to be interfered with. The learned counsel for the informant contended that the learned court below after considering the entire evidence and by taking into account the conduct of the petitioner rightly rejected his plea for discharge and correctly concluded that instead of an offence under Section 304(II) IPC, a case under Section 302 IPC is prima facie made out for the purpose of trial and hence, such a decision is not to be tinkered with in any manner whatsoever.

6. As revealed from the record, the petitioner had filed a discharge petition under Section 227 Cr.P.C. by highlighting upon the circumstances under which the alleged incident happened, when he and other members of the police party had been to the spot to execute NBWs against the deceased persons, who in order to avoid their arrest, indulged in the overt acts. The grounds upon which the charge sheet was filed received strong resistance from the side of the petitioner by describing in detail the manner and circumstances and how the victims conducted themselves, when the police party led by the petitioner had gone to arrest them claiming to have had no role to play by referring to the materials collected during investigation in Balasore Town P.S. Case No.429 of 2012 which fully contradicted the finding in CID, CB Case No.68 of 2012. It is

claimed that Balasore Town P.S. Case No.429 of 2012 registered under Section(s) 307, 309, 294, 506 and 353 IPC was also investigated upon by the CID, CB (Case No.67 of 2012) by the same IO, who ultimately submitted a final report exonerating the petitioner. In fact, it is made to realise that the petitioner himself had drawn up a plain paper FIR on 25.11.2012, where after, Balasore Town P.S. Case No.429 of 2012 was registered, investigation was conducted and then, a final report was submitted after the death of the victims basing upon which it is claimed that the petitioner was in no way responsible for the alleged incident as it happened suddenly and accidentally. The criminal cases pending against the deceased persons and the outcome of investigation at different point of time, even with or without the official involvement of the petitioner were also brought to the notice of the learned court below, while seeking discharge under Section 227 Cr.P.C. which was, however, not taken into account on the ground that such material cannot be examined and analyzed at the time of consideration of charge.

7. In so far as the investigation and materials collected by the IO is concerned, it is made to understand that after considering the same, a conclusion was drawn that during the incident, the petitioner, since was vindictive against the deceased family, had gone to their house and attempted to arrest them and the victims being seriously apprehensive that if arrested, they would severely be ill-treated and assaulted, declared to commit self-immolation but in order to settle personal vendetta, he did not abstain, rather, said to have camped outside which led to a reasonable suspicion in their minds that they would be subjected to police torture after arrested and finding no other way out set themselves on fire. Resting upon

such a conclusion, the charge sheet was filed against the petitioner under Section 304(II) IPC. From the record, it appears that each of the grounds leading to the filing of the charge sheet has been objected to by the petitioner by detailing the events. However, the learned court below concluded that said grounds may be raised at the time of trial, as the petitioner could adduce evidence in respect thereof.

8. In the present case, as revealed from the charge sheet, sanction was obtained in terms of Section 197 Cr.P.C. by the order of the DGP, Odisha to criminally prosecute the petitioner for the alleged offence.

9. Factually, it is made to suggest that the petitioner had been to the house of the deceased in the night of alleged occurrence between 3 to 3.30 AM to arrest them on the strength of NBWs but as per the conclusion of the IO, he, out of personal grudge and ill-will, despite strong resistance received did not desist, rather, proceeded to effect the arrest by any means which forced the victims to commit self-immolation. Said conclusion is based on the alleged circumstances and mischief and misconduct of the petitioner, who, somehow or other, was hell bent to arrest the victims. The challenge to the above findings on the grounds raised, in the considered view of the Court, may be examined by the learned court below during and in course of trial. In fact, an elaborate and detailed scrutiny or examination of the materials on record to find out its truthfulness or otherwise is not permitted at the time of framing of charge, an exercise, which is to be exerted during trial. A court is only to ascertain existence of a prima facie case to enable it to prosecute the accused. No doubt, an onerous responsibility lies on the court to go through the materials on record to see, whether,

charge can be framed for a particular offence or otherwise, when discharge is asked for and for that purpose, it has to do an exercise but in a limited way and not by indulging in any kind of piecemeal trial. The materials collected during investigation vis-à-vis the nature and manner of participation are to be gone into by a court, while framing charge. Likewise, a court has to examine the plea of the accused seeking discharge in a similar manner. In any case, a court can only go into the evidence gathered during investigation and not beyond for the purpose of framing of charge or discharge, for that matter. In other words, charge shall have to be framed by taking into account whatever materials collected during investigation and that too by not elaborately examining and scrutinizing it. In fact, in *State of Bihar Vs. Ramesh Singh* reported in (1977) 4 SCC 39, the Supreme Court held and observed that at the stage of framing of charge, it is not obligatory 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 and at that stage, the court is not to ensure, if there is sufficient ground for conviction of the accused or whether, the trial is definitely to end in conviction. Even a strong suspicion at the initial stage of framing of charge is adequate or sufficient. Furthermore, in *Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and others* reported in (1980) 1 SCR 323, it has been held by the Supreme Court that at the stage of framing of charge, a court is only to see whether the facts alleged and sought to be proved by the prosecution, prima facie, disclose commission of an offence on general consideration of materials placed before it by the IO.

10. An augment is advanced to the effect that referring to the materials on record, no offence could be said to have been

committed and therefore, the impugned order under Annexure-1 is not at all sustainable in law. In other words, the maintainability of the criminal action is outrightly challenged. In this context, it would be apposite to make a mention that extra-ordinary power under Article 226 of the Constitution of India or inherent jurisdiction under Section 482 Cr.P.C. may be exercised in certain situations or circumstances of similar nature which have been lucidly illustrated by the Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others* reported in AIR 1992 SC 604, which are precisely to the following, if the allegations on record do not prima facie constitute any offence or make out a case even if when they are taken at their face value and accepted in its entirety; or where the uncontroverted allegations and the evidence collected in support thereof do not disclose commission of any offence or make out a case against the accused; or in case where there is a legal bar; or where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him on account of private and personal grudge. The above position of law has been consistently followed while considering tenability of a criminal proceeding. In the case at hand, the petitioner has been alleged of committing excess, while performing duty in order to cause arrest of the victims, in a manner which was not lawfully expected from him, as a result of which, the incident took place for which charge sheet under Section 304(II) IPC was finally submitted. The circumstances leading to the death of the victims were described for that purpose. According to this Court, it is not such a case where it can be held that prima facie no offence could at all be said to have been committed by the petitioner so as to quash the criminal proceeding. In other words, the materials on

record can be said to be reasonable enough to sustain a criminal action against the petitioner and therefore, the plea of complete discharge must have to fail. Having said that, the next consideration would be as to what offence the petitioner could be said to have committed regard being had to the nature of the alleged overt acts. The learned court below should have given its due consideration to the materials on record before reaching at a conclusion about the petitioner having committed a particular offence. At the end of the investigation, the IO concluded that the petitioner being responsible for the death of the victims allegedly committed an offence punishable under Section 304(II) IPC which was apparently not accepted by the learned court below, according to which, rather, a case of Section 302 IPC to have been made out. However, it is not revealed from Annexure-1 as to if the learned court below did peruse all the materials on record in order to reach at such a conclusion. On what basis and foundational facts, such a view as has been expressed by the learned court below to the effect that the petitioner possibly committed an offence punishable under Section 302 IPC is not clearly discernable from Annexure-1. It is not that the court is simply to pick up materials in bits and pieces and then to reach at a decision but to go through the entire of it. In situations like the present, it could also be possible to hold that for the alleged misconduct and overt acts on the part of the petitioner, the victims were forcefully driven or compelled or instigated to end their lives by self-immolation and thus, a case of abetment, a conclusion, which can only be drawn by meticulously examining the material evidence available on record. The learned court below did have the comfort to go through the entire of the materials scrutinizing it independently, of course, by an exercise in a limited way and purpose for framing of charge, without being in any manner

influenced by the final view expressed in the charge sheet which, in the humble opinion of this Court, does appear not to have been undertaken and therefore, even the conclusion so reached at under Annexure-1 cannot be sustained.

11. Hence, it is ordered.

12. In the result, the impugned order dated 20.02.2017 under Annexure-1 passed in ST Case No.327 of 2016 by the learned Sessions Judge, Balasore is hereby set aside to the extent indicated. Consequently, the learned court below is directed to go through the materials on record afresh for the purpose of framing of charge after providing an opportunity of hearing to the parties concerned and thereafter to pass appropriate order as per and in accordance with law in the light of the observations made herein above and being alive to the settled position of law.

13. The CRLMC, accordingly, stands disposed of.

14. As the restrictions due to COVID-19 situation are continuing, the learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed vide Court's Notice No.4587 dated 25 March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021 and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(R.K. Pattanaik)
Judge

