

WRIT PETITION NO.6782 OF 2021

INTERIM APPLICATION NO.877 OF 2022
IN
WRIT PETITION NO.6782 OF 2021

In the matter between :

RESERVED ON : 6 APRIL 2022
PRONOUNCED ON : 2 MAY 2022

JUDGMENT : (Per S.M. Modak, J.)

1/11

Judge at Mumbai. It is for the offences punishable under Sections 302, 397, 452 read with 34, 120-B of Indian Penal Code. It is true that a Petition for quashing can be filed at different stages. One is when the investigation is at the stage of registration of FIR. Second, when FIR is registered and certain materials are collected during investigation. Third, when the investigation is complete and charge-sheet is filed. In this case, we are dealing with a case wherein charge-sheet has been filed and that charge against 4 accused is also framed on 15 February 2019.

2 By way of Interim Application, son of the deceased is praying for impleadment. Allowed the said Application. We have heard learned Senior Advocate Shri Chaudhary for the Petitioner accused and learned Special Public Prosecutor Shri Chimalkar, for the Respondent-State. He relied upon the judgment in case of **Rajiv Thapar Vs. Madan Lal Kapoor**¹. We have also heard learned Advocate Shri Niranjana Mundargi, who is for the Intervenor/son of deceased Asha Goel. He relied upon the judgment in case of **Bharat Parikh Vs. Central Bureau of Investigation**². An offence is registered with Malabar Hill Police Station at the instance of one Sureshchandra Agarwal. It is registered against unknown persons. His sister Asha Goel was murdered in the intervening night of 22nd of August 2003 and 23rd of August 2003. The murder took place in Flat No.14-A, in which the first informant Sureshchandra Agarwal resides. Though, needle of suspicion was pointed out towards the first informant Sureshchandra Agarwal, he died prior to taking any action against him.

3 In all, there are 5 accused persons, out of them accused Subhash is

1 (2013) 3 Supreme Court Cases 330

2 (2008) 10 Supreme Court Cases 109

wanted accused. The motive for commission of the murder is a property dispute. The case entirely rests upon circumstantial evidence. During investigation, there is no witness, who had seen the actual assault on the deceased. Asha Goel was having three brothers and sisters. In this case, we are concerned with three brothers. Her father Ranchoddas was having various businesses. Some of them were situated in India, whereas some were abroad. Shekhar, Sureshchandra and Subhash are the three brothers. Shekhar has settled in United States of America for business during the lifetime of his father. Whereas another brother Subhash had gone to Canada also for doing business. Whereas another brother Sureshchandra was carrying on the business of manufacturing jewellery in the name of Candy Industries. So also he is running a lodge by name Little Lodge, V.P. Road, Mumbai. As per the prosecution's case, the main motive for murder is the property dispute. According to prosecution, both these brothers, by name Sureshchandra and Subhash have hatched a conspiracy to eliminate sister Asha. There was a litigation pending in the High Court about the property dispute. The present Petitioner is working as an Manager in Candy Industries owned by Subhash Agarwal wanted accused. Whereas, arrested accused Shri Parab and Shri Shinde were working in the Lodge owned by the deceased accused Sureshchandra. Whereas accused Narendra Goel is the son-in-law of the deceased accused Sureshchandra. This arrested accused Shri Parab has been granted pardon and he has become approver. The prosecution case mainly relies upon the confession.

4 Malabar Police Station registered the offence on the complaint of the brother Sureshchandra. It is against an unknown persons. Malabar Hill Police Station have recorded statements of certain witnesses. The

Petitioner mainly focuses on withholding of those statements by the prosecution when a charge-sheet is filed. It was filed by DCB, CID, Unit No.II. Ultimately, the statements recorded by Malbar Hill Police Station were produced when the Petitioner insisted before the Sessions Court, Mumbai. After initial investigation, as there were no clues, the investigation was transferred to DCB, CID. During their investigation, they have unearthed the conspiracy hatched by two brothers with the help of the local accused persons.

5 Learned Senior Advocate Shri Chaudhary has taken various grounds. It includes the conduct of the prosecution in withholding the statements recorded by Malbar Hill Police Station. According to him, the statements of the said witnesses were recorded, firstly, by Malbar Hill Police Station and secondly, when DCB, CID carried out the investigation. According to him, there is absolutely no evidence against the Petitioner. According to him, even if materials collected by the DCB, CID are considered together, it does not lead to any conclusion that the present Petitioner is involved in this offence.

6 Whereas according to learned Special Public Prosecutor Shri Chimalkar, the investigation was transferred to DCB, CID because the Malbar Hill Police Station were not investigating the offence properly. According to him, no case for quashing is made out because if the materials collected during investigation are considered together, it cannot be said that there is abuse or misuse of the process of the Court. According to him, the prosecution must be given an opportunity to prove their case. Whereas learned Advocate Shri Mundargi also submitted on

the same lines.

Framing of Charge

7 It is admitted fact that the charge has been framed against the present Petitioner and other accused persons on 15 February 2019. It means the Trial Court has found sufficient materials against the accused persons to frame a charge. It will be relevant to consider the provisions of Code of Criminal Procedure on the point of framing of charge. If there is a sufficient ground for presuming the accused has committed an offence triable exclusively by Court of Sessions, a charge can be framed. These are the provisions of Section 228 of the Code of Criminal Procedure. If there is no sufficient ground for proceeding against the accused, the Trial Court is also justified in discharging the accused by invoking the power under Section 227 of the Code of Criminal Procedure. In this case, that stage has already been overcome.

8 It is to true that the provision for framing of charge and the remedy of quashing stands on different footing. If there is misuse or abuse of the process of the Court, this Court is justified in quashing the proceeding. It is true that powers under Section 482 of the Code of Criminal Procedure stands on a wider footing than the provision relating to the discharge. The law on this point is settled. This provision is incorporated in the Code of Criminal Procedure solely for the reason that the accused need not have to face the ordeal of long trial. This Court after doing analysis of the materials has to foresee what will be the effect of the materials if the trial is conducted on those materials.

9 After considering those materials, if this Court feels that there will

be abuse of the process of the Court that is conducting the trial, this court is justified in quashing the proceedings. So we have got two options. First is to quash the proceeding on the basis of the grievances raised on behalf of the Petitioner or second to grant an opportunity to the Prosecution to lead evidence and prove a case. After considering the materials, we are of the considered opinion that Prosecution needs to be given an opportunity to prove the case by adducing the materials. Even though it may be true that there are certain *lacunas* in the materials collected by the Prosecution, we do not think that there are of such nature, so as to stop the prosecution from adducing the evidence. Ultimately, it is material to note that case is based on circumstantial evidence. The Prosecution will have to lead evidence on every circumstance and they can succeed only if they can connect all these circumstances and through a link.

10 We will give reasons for our conclusion. The main allegation against the Petitioner is that he was present when the plan was hatched. He was present in the Lodge along with arrested accused Shri Parab, Shri Shinde and one Narendra Goel, who is the son-in-law of the the diseased Sureshchandra. There is an allegation that present Petitioner accompanied the assailants Parab, Goel and Shinde in Santro car on the fateful day to the flat. He was present in the flat. He opened the flat with the help of keys kept in the office of Candy Industries. After the assault, he closed that flat with the help of keys with him and then again accompanied the assailants in his car. When we have perused the papers with the help of both the sides, we find that there are three sets of witnesses. One set of witnesses are those who are working in the lodge owned by Sureshchandra Agarwal. Second set of witnesses include the employees working at Candy Industries owned by the accused Subhash Agarwal, who

is in Canada. Whereas third set of witnesses includes the security guard and watchman of Sudhakar building and the servants working in the flat owned by accused Sureshchandra Agarwal. It is pertinent to note that Flat No.14-A in Sudhakar Building is owned by Sureshchandra Agarwal. The death body was found in the guestroom of the said flat, whereas Flat No.14-B is owned by Subhash Agarwal. The present Petitioner took all the assailants by opening the door of Flat No.14-B and there is interconnecting door in between Flat No.14-B and Flat No.14-A. The door was not locked and that is how the assailants along with the present Petitioner and another co-accused Narendra could enter the Flat No.14-A.

11 Learned Senior Advocate Shri Chaudhary, invited our attention to statements of the said witnesses recorded by Malbar Hill Police Station and the statements of the said witnesses recorded by DCB, CID.

12 It is important to note that the statements of home servants either suggest that they have left the flat on the day of 22nd of August 2003 or some of the statements suggest that they were present in the intervening night but in a different room. We do agree that the murder has taken place in such a circumstance that it is difficult for investigating agency to collect materials. The reason is Asha was murdered in the flat of his own brother. There are materials to suggest that the brother Sureshchandra was a sick person and dialysis is being performed on him. The deceased must have stayed in the flat of his own brother without having any apprehension that such untoward incident will take place. It is also important to note that all these home servants were the servants of Sureshchandra. There is every reason to believe that these home servants are bound to state whatever instructions are given to them by their employer Sureshchandra Agarwal.

13 We do agree that for these reasons it ought to have been difficult for Malbar Hill Police Station to nab the culprits. It is true that those are the statements of accused Pradip Parab recorded one by Malbar Hill Police Station and one by DCB, CID. But they are not legal confessions. They are also not discovery statements under Section 27 of the Evidence Act. However, everything is changed after the arrested accused Shri Parab has expressed desire to give a confession. Learned Senior Advocate Shri Chaudhary pointed out that when he gave a confession, he was on a bail and there is no pressure on him. It is true that the accused Shri Parab was arrested by Malbar Hill Police Station and he was released on default bail. We have perused the confession given by Parab. At that time investigation was with DCB, CID. It was recorded by the learned Metropolitan Magistrate. He has explained how he was involved in the incident on the instructions of the present Petitioner. When we have perused this confession, on one hand, and on the other hand, we do find that there is corroborating material to the facts stated in the confession. There are statements of witnesses Ravindra Jaiswal, Gajanan Kir Working in Candy Industries. On their perusal we may find that that was a the meeting that took place on 17th August 2003 in the flat at Sudhakar building. It suggest that there was certain interaction between the deceased Asha Goel and his son Sanjay on one hand and the deceased accused Sureshchandra Agarwal on the other hand. That interaction pertains to the ongoing civil disputes in this Court. It also suggest that present Petitioner was present when that interaction took place. Witness Gajanan Kir has also said about visit of Petitioner to their Little Lodge.

14 Apart from this the prosecution claims that at the instance of the

present Petitioner, they have seized the keys of Flat No.14-B belonging to Subhash Agarwal through which all assailants entered the flat. They have also seized at the instance of this Petitioner the purse and the personal belongings of the deceased. It consists of certain documents and the ornaments. All these articles are identified by the deceased's son. At the instance of present Petitioner, they have also seized certain documents relating to Court litigation and clothes. There are CA report and DNA reports by foreign laboratory. Both the sides argued how they are material and what are their lacunae.

15 If we consider all the above materials, it can certainly be said that learned Additional Session Judge was right in framing charge against the present Petitioner. It cannot be said that there is misuse of the process of the Court. This is not the stage to consider what are the lacunas in the prosecution material, so to say that what was not unearthed by Malabar Hill Police Station was by unearthed DCB, CID. This is not the stage to consider whether one set of witnesses' statements corroborate another set of witnesses. This is not the stage to consider whether the evidence of discovery falls simply within the purview of the provisions of Section 27 of Indian Evidence Act.

16 After considering all these materials, it can very well be said that prosecution needs to be given an opportunity to prove their case. Though in the writ petition, Petitioner has relied upon the ground of *alibi* so to say that on the material date, he has traveled to Jaipur by train and after hearing the news about the murder of Asha, he came urgently to Mumbai from Jaipur by flight. But during arguments, learned Advocate Shri

Chaudhary has not pressed this ground.

17 Learned Advocate Shri Chimalkar also invited our attention to the Order passed by this Court on a discharge application made by co-accused Narendra Goel. Initially it was allowed. Whereas this Court has reversed the Order. Accordingly, charge was also framed against co-accused Narendra Goel. So we feel that the prosecution has to be given an opportunity to prove their case. We are inclined to reject this Writ Petition. We made it clear that these are our *prima facie* observations and Trial Court need not be influenced by them. Trial Court is at liberty to decide the matter as per its own merits.

18 At the same time, the circumstances compelled us to give certain directions to the Trial Court. The incident took place in the year 2003 and more than 18 years have elapsed. It is true that some of the accused have approached this Court as well as the Honorable Supreme Court. It is also true that yet the trial has not started. It was argued that the accused persons have made every attempt to protract the trial. So circumstances compelled us to give certain directions to the Trial Court. Hence, the following directions :-

: DIRECTIONS :

- (i) The Trial Court is directed to expedite the case and to decide it as early as possible.
- (ii) The Trial Court is directed to regulate the conduct of the party, who will delay the trial unnecessarily.
- (iii) The Trial Court even is at liberty to impose not

nominal but exemplary Cost of at least Rs.15,000/- on the party who will seek unnecessary adjournments.

(iv) With these observations, Writ Petition stands disposed of as dismissed.

(v) Interim Application No.877 of 2022 is disposed of.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)

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