

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Criminal Revisional Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

CRR No. 227 of 2023

IA No. CRAN/1/2023

Anil Dewan @ Anil Kumar Dewan

Versus

State of West Bengal & Anr.

&

CRR No. 228 of 2023

IA No. CRAN/1/2023

Ramesh Bajoria @ Ramesh Kumar Bajoria

Versus

State of West Bengal & Anr.

Mr. Sanjay Banerjee

Mr. Nabankur Paul

Ms. Sutapa Sen Paul

Mr. Joydeep Bhattacharjee

.....For the Petitioners.

Mr. Aditi Shankar Chakraborty

Mr. Sourav Ganguly

.....For the State.

Hearing Concluded On :17.05.2024

Judgment on : 24.05.2024

Krishna Rao, J.:

1. Both the petitioners have filed their respective applications under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 for setting aside the order dated 21st August, 2023, passed by the Learned Additional Sessions Judge, Mal, Jalpaiguri in connection with SC Case No. 157 of 2015 arising out of Mal Police Station Case No. 655 of 2014 under Section 302/34 of the Indian Penal Code. Wherein the Learned Judge has rejected the applications of the petitioners filed under Section 227 of the Cr.PC.
2. On the basis of the written complaint of one Anjan Kumar Medhi, the Mal Police Station registered a case being FIR No. 655 of 2014 dated 22nd November, 2014 under Section 302/34 of the IPC, against seven persons and many more 200/250 workers. After registration of the case, the police has started investigation and during investigation, several persons have been arrested and on completion of the investigation, the police has submitted charge-sheet for the offence under Section 302/34 of the IPC, against 13 accused persons out of which three accused persons have been shown as absconded accused.

3. After submission of the charge-sheet, some of the accused persons have filed an application for bail before the Hon'ble Division Bench of this Court being CRM No. 4352 of 2015. By an order dated 30th June, 2015, the Hon'ble Division Bench of this Court held that the investigation has not done properly and enough clues are already available in the case diary. The Hon'ble Court has directed to change the Investigating Officer and to appoint a proper and competent person to investigate into the matter and rejected the bail application.
4. As per the order of the Hon'ble Court, another Investigating Officer was appointed and has started further investigation into the matter. On completion of further investigation, a supplementary charge-sheet is filed against further five accused persons including the petitioners for the offence under Section 302/120B of the IPC. The petitioners have obtained anticipatory bail from the Hon'ble Division Bench of this Court.
5. The petitioners have filed applications under Section 227 of the Code of Criminal Procedure, 1973, before the Learned Court of Additional Sessions Judge, Mal, Jalpaiguri but the said applications were dismissed by the Learned Additional Sessions Judge by an order dated 21st August, 2023 and now the petitioners have filed the present application.
6. Mr. Sanjay Banerjee, Learned Advocate representing the petitioners submits that there is no materials against the petitioners for the

alleged offence under Section 302/120B of the IPC. He submits that neither in the FIR nor in the statements of the witnesses describes the name of the petitioners connected with the alleged offence is available.

- 7.** Mr. Banerjee submits that there is no materials are available on record to show that there was any meeting of mind between the persons named in the first charge sheet and the petitioners.
- 8.** Mr. Banerjee submits that to attract the ingredients of the Section 120B of the IPC, the prosecution has to show that there was an agreement or meeting of mind between the conspirators. He submits that it is not the case of the prosecution that the petitioners were present at the place of occurrence on the date of alleged incident.
- 9.** Mr. Banerjee submitted that it was the specific case of the prosecution since inception that due to non-payment to the labours, the labourers have agitated and dragged the deceased and beat him to death on the spot and there is no evidence to say that the petitioners have any agreement with the said labourers who alleged to have caused death of the deceased.
- 10.** Mr. Banerjee submits that the police has submitted supplementary charge-sheet against the petitioners by incorporating Section 120B of the Indian Penal Code, only on the basis of the statement of the wife of the deceased under Section 164 and 161 of the Code of Criminal Procedure, 1973 wherein it is alleged that both the petitioners had past enmity with the deceased over different issues as both the

petitioners alleged that the deceased misappropriated their property breaching their trust in several occasions over which specific cases were lodged against the deceased.

- 11.** Mr. Banerjee submitted that in the charge-sheet, it is also mentioned that the petitioners were having enmity with the deceased but could not produce any documentary evidence or corroborative materials evidences including books of accounts of Sonali Tea garden.
- 12.** Mr. Aditi Shankar Chakraborty, Learned Advocate for the State submits that during further investigation of the matter after the order passed by the Hon'ble Court, the Investigating Officer has collected several materials against the petitioner and other accused persons and submitted charge-sheet.
- 13.** Mr. Chakraborty submitted that there are sufficient materials on record to establish the case against the petitioners.
- 14.** Mr. Chakraborty submitted that the Learned Additional Sessions Judge while deciding the application filed by the petitioners under Section 227 of the Code of Criminal Procedure, 1973, the Learned Additional Sessions Judge considered the materials of record rejected the application filed by the petitioners.
- 15.** Mr. Chakraborty submitted that in the statement recorded under Sections 164 and 161 of the Cr.P.C., the wife of the deceased categorically stated that the petitioners were having enmity with the

deceased over different issues and both have alleged that the deceased had misappropriated their properties breaching their trust in several occasions.

- 16.** Mr. Chakraborty submitted that there are sufficient materials available on record to prove the case against the petitioners for the offence under Section 302/120B of the IPC.
- 17.** Heard the learned Counsel for the respective parties, perused the materials of record and the case diary produced by the Learned Counsel for the State. As per the FIR on 22nd November, 2014, the management of Sonali Tea Estate was supposed to disburse payment of salary for the month of October, 2014 or weekly advance to all the eligible workers. The owner Mr. Rajesh Jhunjhunwala, was stationed at the tea garden since last 6 days but he failed to manage the salary/advance of the workers due to which the workers become excited and agitated. At about 1600 hrs a mob of the garden and 200 to 250 workers came to the bungalow premises and started demanding salary payment of the workers. As the deceased expressed his inability to fulfill their demand, the agitated mob dragged the deceased to the section no. 8D of the Sonali Tea Estate and assaulted the deceased till his death at the spot.
- 18.** In the first Charge Sheet, the Investigating Officer has mentioned that during the investigation, the Investigating Officer had been to Kolkata to record the statement of the wife of the deceased and requested the

wife of the deceased to come to Jalpaiguri for recording her statement under Section 164 of the Cr.PC before the Learned Magistrate but she refused to come to Jalpaiguri and the Investigating Officer has made a prayer before the Learned Bankshal Court at Kolkata for recording her statement under Section 164 of the Cr.PC but the Learned Court refused to record the statement. Though the first Investigating Officer has recorded the statement of the wife of the deceased under Section 161 of the Code of Criminal Procedure, 1973, but in the said statement, she has not stated anything about the petitioners herein.

- 19.** It is found from the record that during further investigation, the Investigating Officer has recorded the statement of the wife of the deceased under section 161 of the Cr.P.C as well as she has made statement before the Learned Magistrate under Section 164 of the Cr.P.C. In the statement she has stated that: *"They are involved. They also threatened to kill my father. My father had informed at Shyampukur Police Station. Sania Oraon is a labour of our garden. My husband used to say that she would disrupt the labours and would not let them work in our garden. My husband never used to stay at night in our garden. Last year, our Manager has requested and managed to convene my husband to stay at night in our garden. In those circumstances, the culprits got an opportunity to kill my husband."*
- 20.** In the statement under Section 161 of the Cr.P.C., the wife of the deceased stated that :

“As far as my knowledge goes, Rajesh was arrested twice, first one in Gangtok cheating case of which I have no idea and another time he was apprehended by police when Ramesh Bajoria, a Mumbai based business man implicated Rajesh Jhujhunwala in case falsely.

As far as I know Ramesh Bajoria bought a land at AJC Bose Road for constructing soft drink factory. Rajesh probably knew him earlier. There was litigation in the land and the relatives of Ramesh Bajoria were trying to take over the said land fraudulently. To save the said land from his relatives Ramesh Bajoria asked my husband to run an office at the said litigated land which will save the land from the encroachers.. Ramesh Bajoria agreed to pay my husband 10% of the sale amount of the land but after the sale instead of paying money, my husband was implicated in a police case fraudulently.

Anil Dewan is a friend of Ramesh Bajoria, had a electronics shop at AJC Bose Road area often used to threaten my husband over the land issue. Anil Dewan is now settled at Siliguri and a very influential man as he claims to remain in the closest vicinity with higher up's of Police. But my husband did not prefer to lodge any criminal case against both Anil Dewan and Ramesh Bajoria.”

21. In the supplementary charge sheet, it is recorded that *“Anil Dhawan and Ramesh Bajoria both had past enmity with the deceased over different issues. Both Anil Dhawan and Ramesh Bajoria alleged that deceased misappropriated their property breaching their trust in several occasions, over which specific cases were lodged against the deceased Rajesh Agarwala @ Jhunjhunwala”.*

22. On the basis of the above statements, the police has submitted charge-sheet against the petitioners for the offence under Section 302/120B of the IPC, 1860.

23. Section 120B of the IPC, 1860, reads as follows:

“120B. Punishment of criminal conspiracy.- (1) *Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

(2) *Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”*

The ingredients of the offence of criminal conspiracy are:

- i. An agreement between two or more persons.*
- ii. The agreement must relate to doing or causing to be done either in an illegal act or an act which is not illegal itself but is done by illegal means.*

A conspiracy is always hatched in secrecy and it is impossible to collect direct evidence of common intention of the conspirator. The meeting of mind of the conspirators can be inferred from the circumstances relied by the prosecution. The circumstances must from the chain of events so that it can be easily come to the conclusion about the involvement of the accused.

To establish the charge of criminal conspiracy is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to

constitute an offence. The offence takes place with the meeting of minds even if nothing further is done. It is an offence independent of other offences and punishable further is done. It is an independent of other offenses and punishable separately. Thus, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of proving criminal misconduct on the part of an accused. Criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The offence can be proved by adducing circumstantial evidence or by necessary implication. Meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence in cases where circumstantial evidence is incomplete or vague.

- 24.** The Hon'ble Supreme Court as well as various High Courts have interpreted the provisions in the understated judgments, that have effectuated the principles to be considered while a Judge is framing charge or discharge an accused :-

In ***Union of India -vs- Prafulla Kumar Samal, (1979) 3 SCC 4***, the Hon'ble Supreme Court laid down the principles regarding the considerations before the concerned Court while framing of charges and discharge an accused : -

10. *Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court 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, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Hon'ble Supreme Court in ***Bhawna Bai –vs- Ghanshyam, (2020)***

2 SCC 217, has laid down as under:

“13. ... At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.

15. Considering the scope of Sections 227 and 228 CrPC, in *Amit Kapoor v. Ramesh Chander* [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986], the Supreme Court held as under : (SCC pp. 477-79, paras 17 & 19)

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for exercise of such jurisdiction.....”

Hon’ble Supreme Court in ***Dilawar Balu Kurane -vs- State of Maharashtra, (2002) 2 SCC 135***, has observed as under :-

“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 (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]).”

In ***Stree Atyachar Virodhi Parishad -vs- Dilip Nathumal***

Chordia, (1989) 1 SCC 715, Hon’ble Supreme Court reiterated as

herein under:-

“14. *These two decisions do not lay down different principles. Prafulla Kumar case [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] has only reiterated what has been stated in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257]. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that “the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused”. The “ground” in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.”*

In the present case, the police has submitted supplementary charge sheet against the petitioners on the basis of the statement of the wife of the deceased only to the effect that there was previous enmity between the petitioners and the deceased but there is no materials on record to show any meeting of mind in between the petitioners and the accused persons named in the FIR as well as in the first charge-sheet.

- 25.** In the FIR, it is the specific case of the prosecution that the deceased failed to arrange the salary/ advances of the garden workers, the said workers become excited and agitated and dragged the deceased and assaulted mercilessly till his death at the spot. This Court perused the case diary as well as the charge-sheet and all materials including the statement of the witnesses recorded during the investigation but has not found any chain of evidence to corroborate the statement of the wife of the deceased to connect the petitioners in this case for the offences under Section 302/120B of the Indian Penal Code.
- 26.** To establish a charge of conspiracy knowledge about indulgence is either an illegal act or a legal act by illegal means is necessary, but in the present case, same is not available.
- 27.** In view of the above, the order passed by the Learned Additional Sessions Judge, Mal, Jalpaiguri, dated 21st August, 2023 in Sessions Case No. 157 of 2015 is set aside and quashed. The petitioners are discharged from Sessions Case No. 157 of 2015 in connection with

Mal P.S. Case No. 655 of 2014 under Section 302/120B of the IPC, 1860. The petitioners are discharged from their respective bail bonds.

28. CRR No. 227 of 2023 and CRR No. 228 of 2023 are allowed.

Consequently, both applications are **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)