



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 88 OF 2024

1. Maroti s/o Adelu Sonkamble
Age : 53 years, Occ. Labour,
R/o. Savargaon Met, Taluka Bhokar,
District Nanded.
2. Latabai w/o Maroti Sonkamble
Age : 47 years, Occ. Labour,
R/o. Savargaon Met, Taluka Bhokar,
District Nanded. ... Applicant

Versus

1. State of Maharashtra,
Through Police Inspector,
Bhokar Police Station,
District Nanded.
2. XYZ ... Respondents

.....
Mr. Gaurav L. Deshpande, Advocate for the Applicants
Mr. D. R. Korade, APP for Respondent No.1-State
Mr. U. T. Pathan, Advocate for Respondent No.2
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.12.2024

Pronounced on : 13.12.2024

ORDER :

1. Feeling aggrieved by the order passed by learned Additional Sessions Judge-2, Bhokar dated 10.01.2024, rejecting application

moved under Section 227 the Code of Criminal Procedure [Cr.P.C.] by original accused nos. 3 and 4, instant application is filed thereby seeking discharge from Special Case No. 10 of 2022.

2. Learned counsel for the applicants pointed out that crime no. 100 of 2022 was registered at Bhokar Police Station, initially for offence under Section 363 r/w 34 of the Indian Penal Code [IPC] against juvenile accused Siddharth and his family members. Subsequently, charge under Section 376(1) of IPC and provisions of the Protection of Children from Sexual Offences Act, 2012 [POCSO] came to be added. Learned counsel submitted that after completion of investigation, investigating machinery filed chargesheet. Learned counsel pointed out that report was lodged by uncle of victim, alleging that non-applicant Siddharth, i.e. son of present applicants, had eloped with his niece. Learned counsel took this Court through the FIR dated 21.03.2022 and would submit that only allegation against present applicants is that they were spotted standing near a *peepal* tree when main accused Siddharth, victim and friend of Siddharth passed on a motorcycle. It is submitted that there is no material in the entire chargesheet to show any distinct or specific role played by present applicants in the episode of kidnapping. Learned counsel took this Court through the statement of victim, her brother,

cousin sister, father and mother and would submit that none of them has specified role played by present applicants. It is his submission that, merely because they are parents of main accused, they are implicated. He submits that necessary ingredients for attracting Section 363 and 376 of IPC are patently missing in the entire chargesheet as regards both the applicants are concerned. That, victim girl is already back in the custody of her family members. After chargesheet, present applicants moved learned trial court seeking discharge under Section 227 of Cr.P.C., however, learned trial court failed to consider and appreciate that there was no iota of evidence, nor any concrete evidence to make them face trial. He submitted that learned trial court, without assigning reasons, merely made observation that there is *prima facie* material. That, there is no sound reasoning for rejecting prayers. That, there is no correct appreciation of settled legal position in spite of reliance being placed. Hence, he prays for relief of discharge of present applicants. He placed reliance on the rulings of *Union of India v. Prafulla Kumar Samal and another* AIR 1979 SC 366; *Dilwar Balu Kurane v. State of Maharashtra* AIR 2002 SC 564 and *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568.

3. Per contra, learned APP strongly opposed on the ground that victim was 16 years of age. She was forcibly taken on motorcycle by son of present applicants. Victim has given statement that parents of main accused, i.e. present applicants, were completely aware about the alleged one sided love affair with victim. In their presence, the girl was forcibly taken on a motorcycle. Victim as well as her sister, who was in her company at the relevant time, have also given statement to that effect and learned APP pointed out that there is material suggesting that previous to the episode of kidnapping, when attempt was made to give understanding to the parents to further give understanding to their son, that time they had issued threats of implicating in atrocity case. Thus, according to learned APP, they all are party in the offence and hence it cannot be said that there is no material against them. Thus, learned APP supports the impugned order and prays to dismiss the revision.

4. Here, admittedly crime no. 100 of 2022 is registered at Bhokar Police Station, District Nanded for offence punishable under Sections 363 and 376(1) r/w 34 of IPC and Sections 4 and 8 of the POCSO Act. The paternal uncle of victim seems to have set law into motion. After registration of crime, investigation was carried out and admittedly chargesheet has been filed. Post filing of chargesheet,

present applicants appear to have moved learned trial court with prayers for discharge by invoking Section 227 of Cr.P.C.. Said attempt has been turned down by order dated 10.01.2024. Hence instant revision.

5. Before advertng to the merits of the case, it would be fruitful to give a brief account of the settled legal position regarding objects and scope of Section 227 of Cr.P.C.

In the case of ***Sajjan Kumar v. CBI*** MANU/SC/0741/2010 : (2010) 9 SCC 368, on the scope of Section 227 of Cr.P.C., the Hon'ble Apex Court observed in para 21 as under :

"21. On consideration of the authorities about scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the 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 reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge 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.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

The Hon'ble Apex Court, on the limited power of sifting the material on record at the stage of charge, in case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat*** MANU/SC/0595/2019 : (2019) 16 SCC 547, observed as under:

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial..."

In *Asim Shariff v. National Investigation Agency* MANU/SC/0863/2019 : (2019) 7 SCC 148 the Hon'ble Apex Court has observed that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations in this regard read as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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 material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out

or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

Some other rulings on this aspect can be named as ***State of Maharashtra and others v. Som Nath Thapa and others*** (1996) 4 SCC 659; ***State of M.P. v. Mohanlal Soni*** (2000) 6 SCC 338; ***Amit Kapoor v. Ramesh Chander and another*** (2012) 9 SCC 460; ***Asim Shariff v. National Investigation Agency*** (2019) 7 SCC 148.

6. Substance of the FIR, at the instance of paternal uncle dated 21.03.2022 goes to show that, his niece (victim) and his own daughter left the house at 12.00 noon on 21.03.2022 to purchase buttons. Around 1.00 p.m., informant's own daughter came running and informed that while they were purchasing buttons, Siddharth Maroti Sonkamble, Milind Laxman Dongre and Sahebrao Maroti Sonkamble came on two motorcycles and forcibly took victim. On receipt of such information, he rushed to the spot and found no one. At that time, his brother, i.e. father of victim, and nephew Prashant had been Hingoli. His nephew Prashant gave phone call to informant, informing that he received call from Siddharth from mobile number 9021885129 informing Prashant that his sister has been kidnapped

and he is planning to marry her and to do whatever he wants. Prashant further told informant about parents of Siddharth, namely Latabai and Maroti, saying to Prashant that they are going to make his sister their daughter-in-law and threatened to implicate in atrocity case. Informant further gave report that two months back, near library, Siddharth was found making gestures to the victim and therefore, he himself and victim's father approached parents of Siddharth, i.e. present applicants, to give understanding and at that time also, they threatened to lodge atrocity case and to kidnap their daughter. On above report, crime has been registered by Bhokar Police Station under Section 363 r/w 34 of IPC. Subsequently, on statement of victim, offence under Section 376(1) and under the provisions of POCSO Act seems to be added.

7. Statements of victim, her brother, cousin sister, father and mother are also recorded by police and the same are also part of chargesheet. Episode which allegedly took place two months back, regarding threatening to file atrocity case and plans to make victim their daughter-in-law is reflected in every statement of above witnesses. Even victim and her sister, who were in company of each other on the relevant day when the girl was taken, have spotted both present applicants standing under *peepal* tree and in their presence,

prosecution claims that, their son forcibly took victim on motorcycle. Said episode took place right under their nose. Consequently, with such material on record, it cannot be said that there is no material against present applicants and their role is not getting crystallized. These are the aspects which are to be dealt at the stage of trial. Submissions advanced that, there is no sufficient material in the chargesheet to make them face the ordeal of trial, has no force. Accordingly, following order is passed:

ORDER

The criminal revision application is dismissed.

[ABHAY S. WAGHWASE, J.]