

The High Court Of Madhya Pradesh

Bench Gwalior

SB:- Hon'ble Shri Justice Rajeev Kumar Shrivastava

CRR 1080 of 2021

Balli Chaudhary alias Rakesh

Vs.

State of MP

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Shri Prashant Sharma, learned counsel for the applicant.
Shri Purushottam Tanwar, learned counsel for the respondent/ State.

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Reserved on 04/01/2022
Whether approved for reporting Yes/.....

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O r d e r
(Passed on 19/01/2022)

The present criminal revision under Section 397 r/w Section 401 of CrPC has been preferred assailing the order dated 02/03/2021 passed by Second Additional Sessions Judge, Dabra, District Gwalior (MP) in Sessions Trial No.16 of 2021, whereby charges under Sections 307, 34 and 452 of IPC have been framed against the applicant.

(2) In brief, facts of the case are that complainant Parmal Singh Bundela recorded a *Dehati Nalishi* at Police Station Bhitarwar, stating therein that he is staying in village Kahriya and running a grocery shop. Accused Rinku Chaudhary Rinku molested his daughter, therefore, on the date of incident i.e. 07/09/2020, he along with her daughter, had gone to the medical dispensary, (CHC), Bhitarwar and the police personnel had also come there. When he was in injection room, applicant- accused along with other co-accused persons who were armed with sword & hockey stick, entered in the room of medical

dispensary and accused Balli Chaudhary alias Rakesh inflicted injury on his head by means of hockey stick as a result of blood started oozing. On that basis, FIR bearing Crime No.409/2020 has been lodged for offence under Sections 307, 323, 34 of IPC at Police Station Bhitarwar. Thereafter, the complainant was medically examined. Afterwards, the applicant was arrested and a hockey stick was recovered from his possession. Statements of witnesses were recorded and after completion of investigation and other formalities, challan was filed by police before the Court below by which, charges under Sections 307/34, 452 of IPC have been framed. Hence, this revision.

(3) It is submitted by counsel for the applicant that there was no intention on the part of applicant to cause death of the complainant and as per opinion of doctor, the injury caused to the complainant was not sufficient to death in the ordinary course of nature, therefore, no case is made out against the applicant under Section 307 read with Section 34 of IPC. It is further submitted that no offence under Section 452 of IPC is made out against the applicant because Section 452 IPC prescribes that there shall be house trespass with intention to cause hurt and assault. The alleged incident is said to have been taken place at the medical dispensary which is an open place for public, therefore, it cannot be said to be an act of house trespass. Hence, the impugned order passed by the Court below cannot be sustainable in the eyes of law. Therefore, it is prayed that the impugned order of framing charges passed by the learned Court below be set aside and the present revision deserves to be allowed.

(4) Learned Counsel for the State supported the impugned order of framing

charges and submitted that *prima facie* offence is made out against the applicant. It is further submitted that considering medical evidence as well as statements of complainant and witnesses, *prima facie*, offence is made out. From the possession of applicant-accused, applicant who was armed with a hockey stick has been recovered. No ground is made out for quashment of charges framed against the applicant and, hence, prayed for dismissal of present revision.

(5) I have considered arguments advanced by learned counsel for the parties and perused the documents available on record.

(6) Section 307 of IPC reads as under:-

"307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein-before mentioned."

Section 452 of IPC reads as under:-

452. House-trespass after preparation for hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 34 of Indian Penal Code runs as under :-

"34.--Acts done by several persons in furtherance of common intention.-- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

(7) As regards framing of charges and quashing the same, the law is well-settled.

(8) In the case of **Union of India Vs. Prafulla Kumar Samal and another** [(1979) 3 SCC 4], it is held by the Apex Court as under:-

“**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.”

(9) In the case of **Dilawar Balu Kurane Vs. State of Maharashtra** [(2002) 2 SCC 135], it is held by the Apex Court 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 **Prafulla Kumar Samal (supra)**].

14. We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no *prima facie* case was made against the appellant."

(10) In the case of **Sajjan Kumar Vs. Central Bureau of Investigation**

[(2010) 9 SCC 368], it is held by the Apex Court as under:-

"21. On consideration of the authorities about the 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 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.”

(11) In the case of **State through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava [AIR 2017 SC 3698]**, it is held by the Apex Court as under:-

“23.... The legal position is well-settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a *prima facie* case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code seeking for the quashing of charge framed against him the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. 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. It may even be weaker than a *prima facie* case.”

(12) Similarly, in the case of **Soma Chakravarti Vs. State**, reported in (2007)

5 SCC 403], it is held by the Hon'ble Apex Court that at the time of framing of charges the probative value of material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. 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. Whether the accused committed the offence or not, can only be decided in the trial. The charge may although be directed to frame when there exists the strong suspicion but it is also trite that the Court must come to a *prima facie* finding that there exists some material therefor.

(13) Further, this Court in the case of **Colgate Palmolive India Ltd. vs. Satish Rohra**, [2005 (4) MPLJ 380], has held in the following manner:-

“6. I have heard the learned Counsel of both the parties and carefully perused the evidence and the material on record. Before considering the evidence and the material on record for the limited purpose of finding out whether a *prima facie* case for issuance of process has been made out or not, it may be mentioned at the very outset that the various documents and the reports filed by the petitioners/Company along with the petition can not be looked into at the stage of taking cognizance or at the stage of framing of the charge. The question whether *prima facie* case is made out or not has to be decided purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

No provision in the Code of Criminal Procedure grants to the accused any right to file any material or document at the stage of taking cognizance or even at the stage of framing of the charge in order to thwart it. That right is granted only at the stage of trial. At this preliminary stage the material produced by the complainant alone is to be considered."

(14) So far as the contention of the applicant that there is no overt act on the part of applicant- accused for commission of alleged offence is concerned, the same is not acceptable because if common intention is proved but no overt act is attributed to the individual accused, Section 34 of IPC will also be attracted. Common intention means a premeditated plan and acting in pursuance to such plan, thus common intention must exist prior to the commission of act in a point of time. So far as the contention of the applicant that the doctor has not opined that the injury was of such nature and was sufficient to cause death in the ordinary course of nature is concerned, the said contention is also not acceptable. Although the opinion of doctor is relevant in view of provisions of Section 45 of Evidence Act, but that too is not conclusive. The opinion of doctor is an evidence and it can rarely, if ever, take the place of substantive evidence and it cannot be conclusive because it is after all opinion evidence. In the present case, applicant along with other co-accused persons with common intention reached the spot, i.e. the medical dispensary and the applicant has inflicted injury on the head of complainant by means of hockey stick, which is fully supported by medical evidence and evidence of witnesses. The learned Court below has considered the material with a view to find out if there is ground for presuming that the accused person has committed the offence. The Court below has analyzed the material for the purpose of finding out whether or

not *prima facie* case against the accused has been made out. The truthfulness of statements or circumstances or documents of prosecution cannot be questioned at this stage by defence. On the basis of material on record, the Court could form an opinion that accused might have committed an offence. It is established that at the time of framing of charges, there is no scope to appreciate the entire evidence in details. The Court below has examined the case and found *prima facie* case against the applicant by which charges have been framed against him.

(15) In view of aforesaid discussion as well as law laid down by Hon'ble Apex Court & this Court, it is clear that whether the accused has committed an offence or not, can only be decided in the trial. I find no perversity or illegality in the order impugned passed by learned Court below warranting any interference by this Court at the stage of framing of charges. Accordingly, revision fails and is hereby **dismissed**.

A copy of the order be sent to the Court below for information and compliance.

(Rajeev Kumar Shrivastava)
Judge

MKB

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