

**Dinesh and anr Vs. State**

**Dinesh and anr Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/1124766](http://sooperkanoon.com/1124766)

**Court :** Rajasthan Jodhpur

**Decided On :** Jan-30-2014

**Appellant :** Dinesh and anr

**Respondent :** State

**Judgement :**

S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 1  
IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1) S.B. Criminal Revision Petition No.1022/2012 Central Bureau of vs. Sohan Lal Bishnoi Investigation & ors. (2) S.B. Criminal Revision Petition No.1023/2012 Amar Chand vs. The Union of India (3) S.B. Criminal Revision Petition No.878/2012 Dinesh & anr. vs. The Union of India (4) S.B. Criminal Revision Petition No.637/2013 Vishna Ram &ors. vs. The Union of India. (5) S.B. Criminal Revision Petition No.275/2013 Reshma Ram vs. The Central Bureau of Investigation. Under Section 397 read with Section 401, Cr.P.C. against the order dated 4.10.2012 passed by Special Judge,Scheduled Castes/Scheduled Tribes(Prevention of Atrocities) Cases, Jodhpur in Sessions Case No.97/2011. (6) S.B. Criminal Revision Petition No.52/2013 Sahil Pemawata vs. The State of Raj. Under Section 397 read with Section 401, Cr.P.C. against the order dated 21.12.2012 passed by Special Judge,Scheduled Castes/Scheduled Tribes(Prevention of Atrocities) Cases, Jodhpur in Criminal Misc. Case No.129/2012( relating to Sessions Case No.97/2012) Date of Order :

30. 1.2014 PRESENT HON'BLE MR. ATUL KUMAR JAIN, J.

S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 2 Mr. Ezaz Khan, & Mr. S.S. Yadav, Sr. Public Prosecutors for C.B.I. Mr. Panney Singh, Special Public Prosecutor for C.B.I. Mr. Neel Kamal Bohra, Mr. Nishant Bora, Mr. Javed Moyal for the petitioners in S.B.Cr.Revision Petitions No.275/2013, 637/2013, 878/2012, 52/2013 and 1023/2012. Mr. Mahesh Bora, Sr.Advocate with Nishant Bora, Mr. J.S. Choudhary, Sr.Advocate with Mr. Tarun Dhaka, Mr. Sunil Joshi, Mr. Neel Kamal Bohra, Mr. Javed Moyal, Mr. Rajendra Choudhary, Mr. Hemant Nahta, Mr. Hanuman Khokhar, Mr. Vinod Sharma for the accused persons in S.B.Cr.Revision Petition No.1022/2012. BY THE COURT: In Sessions Case No.97/2011, the Special Judge, Scheduled Castes/Scheduled Tribes(Prevention of Atrocities) Cases, Jodhpur, in relation to FIR No.383/2011 dated 5.9.2011 registered at Police Station Bilara, District Jodhpur has discharged accused Parasram from the charges of Sections 120B, 364 and 302 of Indian Penal Code and Section 3(2)(V) of Scheduled Castes/Scheduled Tribes(Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989') and he has been ordered to be charged only under Section 202 IPC. Similarly, accused Om Prakash has also been discharged by that court from the charges of Sections 120B, 364 and 302 of Indian Penal Code and Section 3(2)(v) of the Act of 1989 and he has also been ordered to be charged only under Section 201 of Indian Penal Code while other S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 3 thirteen accused persons, namely,

(1) Sohan Lal,

(2) Sahi Ram,

(3) Mahipal ,

(4) Malkhan Singh,

(5) Kumbha Ram,

(6) Umesha Ram,

(7) Reshma Ram,

(8) Pukhraj,

(9) Dinesh,

(10) Bishna Ram,

(11) Kailash,

(12) Ashok and

(13) Shahabuddin have been ordered to be charged by the said court under Section 302/120B IPC, 364/120B IPC, 201 IPC and 120B IPC and Section 3(2)(v) of the Act of 1989 and the sixteenth accused Amar Chand, who himself was of Scheduled Caste, was ordered to be charged only under Section 120B and 364/120-B IPC.

2. In S.B. Criminal Revision Petition No.1022/2012, which has been filed by Central Bureau of Investigation(for short 'CBI'), it has been prayed that (1) accused Paras Ram and (2) Om Prakash should also be ordered to be charged for the offences from which they have been discharged by the trial court and it has also been prayed that the charge of Section 201 IPC should also be ordered to be framed against accused Paras Ram in place of charge of Section 202 IPC. It has also been prayed that the charge framed as such against all the accused-persons should be re-framed because there are so many errors and omissions in the charges framed against the accused-persons. Accused persons have prayed for complete discharge in their respective petitions. S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 4 3. The learned Public Prosecutor appearing on behalf of CBI has placed reliance on the following rulings:- (1) State of Karnataka vs. L. Munishwamy & ors. 1977 Cr.L.J.

1125(1), (2) State of Bihar vs. Ramesh Singh, 1977 Cr.L.J.

1606(1), (3) Union of India v. Prafullal Kumar Samal 1979 Cr.L.J.

154(1), (4) Supdt. and Remembrancer of Legal Affairs, W.B. vs. Anil Kumar Bhunja, 1979 Cr.L.J.

1390(1), (5) Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bjokka & ors., 1990 Cr.L.J.

1869(1), (6) State of Maharashtra v. Somnath Thaps. AIR 1996 SC1744 (7) State of Maharashtra v. Priya Sharan Maharaj & ors. (1997) 4 SCC393 (8) State of M.P. v. S.B. Johari & ors. AIR 2000 SC665 (9) State of Delhi v. Gyan Devi & ors. AIR 2001 SC40 (10) Sanghi brothers (Indore) Pvt.Ltd. v. Sanjay Choudhary & ors., AIR 2009 SC9 (11) State of M.P. v. Sheetia Sahal and ors. AIR 2009 SC (Supp) 1744, (12) P. Vijayan v. State of Kerala & anr. AIR 2010 SC663 (13) Shoraj Singh Ahlawat & ors. v. State of UP & anr. AIR 2013 SC52 (14) State of Rajasthan through CBI v. Rajendra Rathore 2013(1) Cr.K.R. (Raj.) 174. (15) Kanti Bhandra Shah v. State of West Bengal 2000 Cr.L.J.(SC) 746(1) (16) U.P. Pollution Control Board v. Mohan Meakins Ltd. & anr., 2000 Cr.L.J.

(SC) 1799, (17) Aashish Chadha v. Aasha Kumari, 2012(1) Criminal Court Cases (SC) 102. I have perused all the aforesaid rulings. S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 5 4. Following criminal revision petitions have also been filed by different accused-persons with a prayer to discharge them from almost all the charges for which they have been charged: (1) S.B.Criminal Revision Petition No.878/2012- Dinesh & anr. v. The State of Rajasthan, (2) S.B.Criminal Revision Petition No.1023/2013- Amar Chand v. Union of India, (3) S.B.Criminal Revision Petition No.52/2013- Sahil Pemawat v. the State of Rajasthan, (4) S.B.Criminal Revision Petition No.120/2013- Malkhan Singh v. CBI, (5) S.B.Criminal Revision Petition No.275/2013- Reshma Ram v. CBI, (6) S.B.Criminal Revision Petition No.637/2013- Vishna Ram & ors. v. Union of India. Out of these six above mentioned criminal revision petition, S.B.Cr.Revision Petition No.120/2013 titled as Malkhan Singh v. CBI has been separated from the present bunch of files because in the order-sheet dated 18.12.2013, I had mentioned that in all these matters, opportunities to argue the case to the accused- persons/litigants have been given on more than a dozen times but still some of the accused are not satisfied with their performance during

their arguments and the matter is being argued at disproportionate length since 9.1.2013 and so, after writing a detailed order on 17.1.2014, I had asked the learned S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 6 Advocates for the accused Malkhan Singh to argue his matter before another Bench in which he had prayed for discharge from almost all the charges which were framed against him. Now that file is said to be pending before regular Bench hearing the criminal revision petitions. Present order will not affect the merits of that petition.

5. By this order, this Court has to decide S.B.Criminal Revision Petitions No.1022/2012, 878/2012, 1023/2012, 52/2013, 275/2013 and 637/2013 only.

6. So far as corrections of typographical errors or other minor omissions in the charges framed against the accused-persons, after hearing both the parties, this Court would like to reproduce here Sections 215 and 216 of Cr.P.C. which are as follows:-

215. Effect of errors.- No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 7 occasioned a failure of justice

216. Court may alter charge.-(1) Any Court may alter or add to any charge at any time before judgment is pronounced. (2) Every such alteration or addition shall be read and explained to the accused. (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary. (5) If the offence stated in the altered or added charge is one for the prosecution of which previous

sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

. S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 8  
7. Looking to the aforesaid provisions of Criminal Procedure Code, it can be said that minor errors and omissions which may be found in the charges, if brought to the notice of the trial court by the CBI, then the trial court will be supposed to correct the errors and insert the omitted words or replace the unnecessary words if any in the charges and if that court is not convinced with the prayer of CBI in this regard then that court should pass a speaking order explaining why it does not want to concede to the request of CBI. That order will be subject to challenge before appropriate forum. This prayer of CBI in S.B.Cr. Revision Petition No.1022/2012 to that extent is hereby disposed of accordingly.

8. Then comes the question of charge regarding offence under Section 3(2)(v) of the Act of 1989. It appears that mainly on the basis of the statements of PW-22 Kailash Chand, PW-23 Indra Solanki and PW-187 Laxman Ram, the trial court has framed this charge against thirteen accused persons (except (1) Amar Chand, who was husband of deceased Bhanwari Devi, (2) Om Prakash and (3) Paras Ram). The case of Amar Chand is quite separable from the case of other accused-persons because he himself was S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 9 of Scheduled Caste and so he has rightly not been charged under Section 3(2)(v) of the Act of 1989. Om Prakash and Paras Ram have not been made to suffer the charge under Section 3(2)(v) of the Act of 1989. So far as thirteen other accused-persons are concerned, it can be said that there is no iota of evidence even in the prosecution story from which it can be inferred that the offences of abduction and murder have been committed against Bhanwari Devi on the basis of her caste. As per the prosecution story itself, Bhanwari Devi was having illicit relations with one of the accused in this case and when she tried to blackmail that accused with the help of a Video CD, she was abducted and murdered by accused-persons in conspiracy with the said accused. There is prima facie no evidence in the case that she was abducted and murdered only because she was from Scheduled Caste community. It is not enough if the

victim belongs to Scheduled Caste but the offence must have been committed on her because of her caste only and only then charge under Section 3(2)(v) of the Act of 1989 could have been framed against the accused-persons. This element is *sin qua non* for application of Section 3(2)(V) of the Act of 1989. S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 10 9. Following rulings of the Hon'ble Apex Court may be referred here:- (1) Dinesh @ Budha v. State of Rajasthan, (2006) 3 SCC771 (2) Ramdas and ors. v. State of Maharashtra, (2007) 2 SCC170 In aforesaid cases , it was held that only when the offence has been committed on the basis of caste of the victim, charge under Section 3(2)(v) of the Act of 1989 could have been framed. Mere fact that the victim happened to be a woman belonging to Scheduled Caste, will not attract the provisions of the Act of 1989 and hence in the case in hand, none of the accused-persons could have been charged under Section 3(2)(v) of the Act of 1989 (leaving aside the case of accused Malkhan Singh whose S.B.Criminal Revision Petition No.120/2013 is said to be pending before another Co-ordinate Bench of this Court). In view of above, S.B. Criminal Revision Petition No.1022/2012 filed by CBI to that extent is hereby disposed of accordingly.

10. So far as S.B.Criminal Revision Petition No.52/2013 is concerned, this revision petition was filed by Sahil, who is son of deceased Bhanwari Devi. In this petition, he had prayed that during the investigation of the said case, one Maruti Swift Car S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 11 No.RJ19CB4329 was seized and Bhanwari Devi was registered owner of that vehicle, so being her son, he is entitled to get the custody of the said vehicle. In Sessions Case No.99/2011, the trial court in Criminal Misc. Case No.129/2012 under Section 451, Cr.P.C., by order dated 21.12.2012 refused to accept the application of Sahil s/o Bhanwari Devi and had ordered that the said vehicle be given in *supurdgi* of accused Sohan Lal, because in view of the trial court, the accused Sohan Lal was said to have purchased the said vehicle from Bhanwari Devi before her death by making part payment to her. In the circumstances of the case, other legal heirs of Bhanwari Devi, namely, accused Amar Chand, Gungun(daughter) and Ashwin(son) should also have been made a party in the petition. Accused Sohan Lal should also have been named as a respondent in the petition. Petitioner Sahil has not bothered to make them parties in his revision

petition and hence this Court does not think it fit to accept the S.B. Criminal Revision Petition No.52/2013 of Sahil, which deserves dismissal and the same is hereby dismissed.

11. Now we will look into the other arguments of CBI in S.B.Criminal Revision Petition No.1022/2012 wherein it has been prayed that charges of Sections 364, 302, 201 and 120B IPC S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 12 should have framed against Om Prakash and Paras Ram.

12. It has been argued on behalf of CBI that at the stage of charge, benefit of doubt should not have been given to accused Om Prakash and Paras Ram and it has further been argued that at the stage of charge, trial judge had the power to sift and weigh the evidence for the limited purpose to find out, whether or not a prima facie case against the respondents has been made out. It has been argued on behalf of CBI that the trial court at the stage of charge, was not entitled to marshal the evidence found on record of the case. It has been argued further that if on the basis of material on record, if the court could have formed the opinion that the accused might have committed an offence, it should have framed the charge, though for conviction, the conclusion is required to be proved beyond reasonable doubt that the accused has committed the said offence. At the time of framing of the charges, the probative value cannot be gone into and the material brought on record by the prosecution at this stage has to be accepted as true. Before framing a charge, the court must have either applied its judicial mind on the material placed on record and must be satisfied that the commission of the offence by the accused was possible. S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 13 Whether any accused had committed the offence, can be decided only in the conclusion of the trial. Charge may be framed on the basis of strong suspicion against the accused.

13. On the other hand, it has been argued on behalf of accused Paras Ram and Om Prakash that they have rightly been discharged from the charge of conspiracy, abduction and murder etc. because they have been said to have joined the chain of the events at a very late stage and even the charge under Sections 201 and 202 IPC respectively could not have been framed against them.

14. This Court has heard the matter and also perused the record. In this case, some of the witnesses have stated that accused Malkhan Singh had given the responsibility to accused Paras Ram to eliminate Bhanwari Devi. Statement of witness Deva Ram also may be read in this regard. Similarly, witness Kusum Bishnoi states that Paras Ram was in knowledge of proposed act of murder in the morning of 2.9.2011, meaning thereby, he was knowing at that time that Bhanwari Devi is going to be killed in near future. Without being part of the conspiracy to abduction and murder, he could not have known this fact in S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 14 advance. It is also on record in the statements of witnesses in this case that accused Paras Ram had exchanged the number of calls with other accused-persons of the case soon after the knowledge of existence of a Video CD of illicit relation of one accused with Bhanwari Devi, which was published in news broad- cast of ETV. It is also on record that last call dialed by Bhanwari Devi before her death was also to Paras Ram as per prosecution story.

15. Confessional statements of accused Sahi Ram, Vishna Ram, Kailash and statements of other witnesses Shyam Lal, Deva Ram, Lakha Ram have also been ignored by the trial court. If we go through these statements, charge of abduction and murder and criminal conspiracy should have been framed against Om Prakash and Paras Ram also. If a lady was abducted by some of the accused-persons and she was then murdered by some of the accused-persons and then her body was unscrupulously disposed of by some of the accused persons, then all these accused- persons should have been charged for conspiracy, abduction and murder of the lady and causing disappearance of evidence and at the stage of charge, benefit of doubt could not have been and should not have been given to any of the accused-persons S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 15 including Om Prakash and Paras Ram. S.B. Criminal Revision Petition No.1022/2012 stands disposed of accordingly.

16. So far as S.B.Criminal Revision Petition No.1023/2012 filed by accused-petitioner Amar Chand is concerned, he is husband of deceased Bhanwari Devi. It is not clear that why the pardon was not offered or tendered to him under the provisions of Section 306 Cr.P.C ?. It was a fit case in which pardon could have

been and should have been offered/tendered to him subject to fulfillment of other conditions mentioned in Section 306 Cr.P.C. The trial court, with a view to obtain at the trial, the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence has power to tender a pardon on some conditions to such person in this matter. In the interests of justice, if advised the CBI, should even now move an application for tender of pardon to accused Amar Chand for obtaining better evidence in the matter. In the circumstances, the charges framed against accused Amar Chand by the trial court do not deserve to be interfered with in this criminal revision petition. His petition stands dismissed. S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 16

17. In S.B.Criminal Revision Petition No.637/2013 has been filed by accused (1) Vishna Ram, (2) Kailash and (3) Ashok , it has been argued on behalf of accused-petitioners that they should be either discharged or alternatively, all of them may be released on probation. When the accused-persons plead and pray for the benefit of probation, it means that at the stage of charge, they have no material to contest the matter and in the circumstances of the case, after hearing both the parties in the matter and after perusal of the impugned order, I am convinced that no case of interference with the trial court's order to the extent of charges under Sections 302, 364, 201 and 120B IPC is made out against these accused persons and their revision petition deserves to be dismissed to that extent. They have already been discharged from the charge of Section 3(2)(v) of the Act of 1989 in the earlier part of this order in S.B.Cr.Revision Petition No.1022/2012. S.B.Criminal Revision Petition No.637/2013 stands disposed of accordingly.

18. In S.B. Criminal Revision Petition No.275/2013, which has been filed by accused Reshma Ram, it has been argued on his behalf that the impugned order has been passed by the trial court in flagrant abuse of process and it has been argued that S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 17 the impugned order is perverse, illegal and incorrect. It has been argued that a meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence while the CBI has not adduced any evidence in this regard. It has also been argued that the statements of witnesses Sahi Ram, Rahul, Leela, Vijay Laxmi, Rajesh Parihar, Kana Ram, Madan, Deva Ram, Swaroop Ram and Amari Devi have not been properly gone through by the trial court. It has

further been argued that the trial court has not applied the principle of law propounded in various rulings of the Apex Court from time to time. It has also been argued that the criminal court should not frame charges on the basis of far fetched conjectures and surmises. In the light of the arguments, I have perused the record of the case and I have also perused the impugned order. After hearing both the parties at length, I am convinced that no case for interference with the trial court's order is made out in relation to Reshma Ram and his Criminal Revision Petition No.275/2013 deserves to be dismissed, which is hereby dismissed.

19. S.B. Criminal Revision Petition No.878/2012 has been filed on behalf of accused-petitioner Dinesh and Pukhraj in the matter. They have also argued that the impugned order is S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 18 perfectly illegal and against the facts as well as against the law. It has been argued on their behalf that the trial court has not properly appreciated the evidence collected by CBI in the true perspective. It has further been argued that during the investigation, accused Dinesh was arrested and on his alleged information under Section 27 of the Indian Evidence Act, 1872, the place was identified by accused Dinesh where rupees fifty thousand were handed over by Pukh Raj to co-accused Amar Chand. It has further been argued that other evidence which has been collected against petitioner Dinesh that after abduction of Bhanwari Devi, rupees five lacs were delivered to Pukhraj so that he could have paid the amount to co-accused Sahi Ram and at that time Dinesh was also there. It has been further argued that allegation against Pukh Raj is that rupees five lacs were handed over to him by Sahi Ram and it has been alleged by the prosecution that in furtherance of the conspiracy, Sohan Lal purchased Maruti Swift Car of Bhanwari Devi and thus, there is no prima facie proof of criminal conspiracy against these two accused-persons. It has further been argued that there was no meeting of minds between these accused persons with other accused-persons. It has further been argued that these two persons had never met other accused-persons and they had no S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 19 relation with the crime of abduction and murder.

20. I have heard both the parties at length. From the charges of Section 3(2)(v) of the Act of 1989, these two accused- petitioners also have already been discharged

in the earlier part of the order passed in relation to S.B.Criminal Revision Petition No.1022/2012. So far as other charges are concerned, certainly there is prima facie evidence against them and it is also a settled law that even on the basis of grave suspicion, charge may be framed and at this stage, benefit of doubt cannot be given to the accused-persons and hence S.B.Criminal Revision Petition No.878/2012 filed by Dinesh and Pukh Raj is bereft of any force to that extent and the same stands disposed of accordingly.

21. All the above six criminal revision petitions stand disposed of as indicated above. Now accused-persons will face the trial on the following charges: (1) Amar Chand : under Section 364/120-B IPC (2) All other accused : under Sections 364, 302 & 201 IPC persons(except read with Section 120B IPC. Malkhan Singh) 22. This order will not affect the merits of the case and Malkhan Singh's right to claim the discharge will be dealt with in S.B.Criminal Revision Petition No.1022/2012 & other five connected revisions. 20 S.B.Criminal Revision Petition No.120/2013 by the concerned regular Bench. A copy of this order be sent to the trial court immediately. ( ATUL KUMAR JAIN),J.

mlt

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**