

Pushpa Devi and anr. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Dec-09-2004

Reported in : 2005CriLJ1948

Judge : Amar Saran, J.

Acts : Evidence Act - Sections 106; Code of Criminal Procedure (CrPC) - Sections 309 and 482; Indian Penal Code (IPC) - Sections 120B, 227, 228, 302 and 498A

Appeal No. : Crl. Misc. Application No. 13301 of 1992 with Crl. Rev. Nos. 866 and 887 of 1988

Appellant : Pushpa Devi and anr.

Respondent : State of U.P. and anr.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Rajeev Goswami and ;S.V. Goswami, Advs.

Disposition : Revision dismissed

Judgement :

Amar Saran, J.

1. Heard learned Counsel for the applicants in the aforesaid criminal application under Section 482, Cr. P.C. and the said two connected criminal revisions, and the

learned AGA for the State as well as perused the record.

2. The criminal application under Section 482, Cr.P.C. moved on behalf of Smt. Pushpa Devi and Smt. Premwati is being disposed of along with Crl. Revision No. 866 of 1988, moved on behalf of Chunni Lal, Pushpa Devi (again) and Ramesh and Crl. Revision No. 867 of 1988 moved on behalf of Premwati (again) and Satish. Crl. Revision No. 866 of 1988 and connected Crl. Revision No. 867 of 1988 was filed on 7.7.1988 when further proceedings in S.T. Ho. 871 of 1987 pending in the Court of IV Addl. Sessions Judge, Aligarh, were directed to remain stayed until 18.8.1988. The impleadment application for impleading complainant was allowed on 18.8.2004. However, in spite of notice, opposite party No. 2 has not put in appearance in this case. It appears that the criminal application under Section 482, Cr.P.C. was filed on behalf of the applicants, Pushpa Devi and Premwati, even though they were the revisionists in two earlier criminal revisions, in Order to obviate any controversy about maintainability of the revisions against the Orders framing the charge.

3. The basic prayer in the application and the criminal revisions was for quashing the charges against the applicants under Section 302 read with Sections 120B and 498A, I.P.C. Learned Counsel for the applicants states that so far as Satish, husband of the deceased Smt. Indu Bala, who is one of the applicants in Criminal Revision No. 867 of 1988, is concerned, he is not pressing the revision on his behalf. Also, so far as the other accused are concerned, he is not objecting to framing of the charges under Section 498A, I.P.C, but only prays that no charge under Section 120B read with Section 302, I.P.C. should be framed.

4. The prosecution case mentioned in the FIR was that Satish was married to Indubala on 26.4.1987. Indubala's natal family had given more than Rs. 40,000/- by way of dowry, but Satish Chandra, his mother Premwati, his brother-in-law (bahnoi) Chunni Lal were not satisfied with the dowry and they were demanding a motorcycle, a steel almirah and Rs. 10,000/- cash, in addition. They had beaten up the niece Indubala of the informant, Nand Prakash, on several occasions. On 25.6.1987 Satish Chandra, his mother Smt. Premwati and brother-in-law Chunni Lal gave a beating to Indubala and turned her out of their home and told her to

come back only with Rs. 10,000/-. On intervention of certain family members, and on their assurances that they would give the dowry items demanded, Satish, his brother-in-law Chunni Lal, sister Pushpa, the mother Premwati, took Indubala back. But, again they brought her back to her maika (wife's parents' home) within an hour. On 21.8.1987, Chunni Lal, Pushpa and one Ramesh Chandra (bahnoi of Chunni Lal), came to the house of the informant and took back Indubala after assuring them that they would not bear her again and would not make any further dowry demands. On 25.8.1987, Chunni Lal and Pushpa are said to have come to the informant to inform him that Satish and Indubala had become traceless. When the informant reached Satish Chandra's house along with Jai Prakash and Pramod and made an inquiry from Premwati, she is said to have disclosed that Indubala had been taken away by Satish Chandra and Ramesh Chandra and they had locked their room. The key was said to be lying in the courtyard. When the room was unlocked, they found that Indubala's clothes were lying there. As Premwati asked them to wait till the evening, they waited. At about 11 or 12 noon, Satish Chandra returned home on 26.8.2004, but he refused to give any information about the whereabouts of Indubala. From this, the informant concluded that Satish Chandra, in conspiracy with Chunni Lal, his wife Pushpa and Ramesh and his mother had removed Indubala or killed her and disposed of her deadbody. On basis of the aforesaid FIR and statements of the witnesses, the charges were framed under Sections 498A and 302 read with 120B, I.P.C. by the learned IV Addl. Sessions Judge, Aligarh, on 26.5.1988, which have been challenged in this application.

5. The contention of the learned Counsel for the applicants is that the applicants are not family members of the accused Satish and they live separately. In my view, this averments cannot be examined at the stage of framing of the charges and under Section 482, Cr.P.C. Secondly, as the FIR states that Chunni Lal, and Smt. Pushpa Devi had informed the informant on 26.8.1987 that Satish Chandra and Indubala had left for some unknown place, hence they could not be involved in this case and no charge under Section 120B, I.P.C. could be framed against them. In my view, it cannot be determined at this stage whether the accused Chunni Lal and Pushpa Devi had truthfully mentioned that Satish Chandra had gone away with Indubala, or that they had also conspired along with Satish

Chandra for the removal or murder of Indubala and they had sought to deceive the informant by raising this plea. The third ground is that the allegation of harassment against the applicants by the prosecution witnesses are vague and no charge under Section 498A, I.P.C. is made out. Clear allegation of demand of specific items and cash are mentioned in the FIR and, in any case, all these matters alluded to above, are questions of fact which can only be determined by the Trial Court when it considers the prosecution evidence and the defence evidence and there is no illegality in the Order framing the charges, as merely from one or two averments made by certain accused persons to the informant, which are narrated in the FIR and which could easily have been made to save their own skin, no ground for quashing of the charges under Section 302 read with Section 120B or under Section 498A, I.P.C. could be made out. Learned Counsel for the applicants has placed reliance on the following passages in paragraphs 5, 8 and 10 in the case of Union of India v. Prafulla Kumar, AIR 1979 Supreme Court 366, which are being quoted as under:

'..... Thus, it would appear that the Legislature while dispensing with the procedure for commitment inquiry under the Code of 1898 has conferred a dual responsibility on the trial Judge who has first to examine the case on the basis of the statement of witnesses recorded by the police and the documents filed with a view to find out whether a prima facie case for trial has been made out and then if such a case is made out to proceed to try the same. In our view the Legislature has adopted this course in Order to avoid frivolous prosecutions and prevent the accused from being tried of an offence on materials which do not furnish a reasonable probability of conviction.....' (Paragraph 5)

'....., The scope of Section 227 of the Code was considered by a recent decision of this Court in the case of State of Bihar v. Ramesh Singh, (1978) 1 SCR 257 : AIR 1977 Supreme Court 2018, where Untwalia, J. speaking for the Court observed as follows (at p. 2019)--

'Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think

that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in Order to frame a charge against the accused.'

'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) Whether 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.

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 inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial'. (Paragraph 10)

6. I do not think that in the facts of the case the aforesaid passages significantly advance the argument of the learned Counsel for the applicants. The passages clearly state that whilst the Court framing the charges is not meant to be a post-office or a mouthpiece of the prosecution and has to consider the probabilities of the case, but the passages also clearly mention that if grave suspicions are disclosed against the accused, which has not been properly explained, the Court will be fully justified in framing the charge against the accused and proceeding with the trial. In this case we find that inconsistent pleas were taken up by the accused. Thus, the FIR itself mentions that Chunni Lal and Pushpa are said to have told the informant when they went to his house on 25.8.1987 that Indubala had disappeared along with her husband. However, when the informant arrived at the house, his mother Smt. Premwati disclosed that Satish Chandra and Ramesh Chandra had taken away Indubala and, as I have indicated above, these pleas could have been set up by the accused persons for trying to save their own skin. In any case, these are matters about which all the accused persons would have special knowledge. The girl had disappeared within 2 months of her marriage and involvement of all the applicants, and not only the applicant, Satish, could not be Ruled out at the stage of framing charges. Certainly, strong suspicion is disclosed against the accused persons and these facts about the whereabouts of Indubala are the facts within their own knowledge in respect of which they will have to give an explanation, as is required under Section 106 of the Indian Evidence Act, In Smt. Omwati and Anr. v. State, through Delhi Administration and Others, II (2001) CCR 43 (SC)=II (2001) SLT 796=2001 (2) U.P. Cr. R. 85 (Supreme Court), it has been clearly mentioned in paragraph 8 as follows;

'At the stage of passing the Order in terms of Section 227 of the Code, the Court has merely to peruse the evidence in Order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the Court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the Court can discharge the accused. The Court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. This Court in *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, I (1989) DMC 390=(1989) 1 SCC 715, cautioned the High Courts to be loath in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the Rule unless there is a glaring injustice staring the Court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on particular point, as there are Courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed.'

7. In this view of the matter, there is no force in the aforesaid application under Section 482, Cr.P.C. and the connected criminal revisions and they are dismissed.

8. As the proceedings appear to have stayed in these cases since 7.76.1988, i.e., for a period of over 16 years, it is expected in the interest of justice that the Trial Court may now conclude the trial expeditiously, preferably within 6 months from today, keeping in mind the mandate of Section 309 of Cr.P.C. Stay Order granted earlier is vacated.

9. The office is directed to transmit a copy of this Order to the Court below concerned within a week from today for compliance.