

Rajendra Singh Sethia Vs. State

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Court : Delhi

Decided On : May-24-1995

Reported in : 1995IIIAD(Delhi)162; 1995(34)DRJ137; 1995RLR448

Judge : Mohd. Shamim, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 228; [Indian Penal Code \(IPC\), 1860](#) - Sections 224

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1090 of 1994

Appellant : Rajendra Singh Sethia

Respondent : State

Advocate for Pet/Ap. : P.N. Lekhi,; Yakesh Anand and; R.D. Jolly, Advs

Judgement :

Mohd. Shamim, J.

(1) The petitioner through the present petition has taken exception to the orders dated January 18,1994 passed by Shri L. D. Mual, Additional Sessions Judge, Delhi, whereby he framed charges against the petitioner and other co-accused persons under Sections 224/223/129/328; 328 read with Sections 109 and 120B of the Indian Penal Code; and the order dated January 20,1994 where through the learned additional Sessions Judge framed charges against the petitioner under

Sections 224 read with Sections 109 & 120B of the Indian Penal Code.

(2) Brief facts which led to the presentation of the present petition are as under: that the petitioner is an Indian citizen. He had all along been living and working in the United Kingdom and the U.S.A. He was the Chairman of Esal Group of Companies. He came to India during December 1984/ January 1985. A case was registered against the petitioner by the Central Bureau of Investigation bearing No.RC 1/85 Cir (11)/CBI under Sections 420,468, 471 and 120B of the Indian Penal Code for allegedly defrauding the Indian Banks in United Kingdom. The petitioner was arrested on March 1,1985. Since then the petitioner was in judicial custody i.e. Tihar Central Jail No.1, Ward No. 1 till he was released on bail on February 13,1987. Another accused known as Charles Sobhraj was also at that time in Tihar Jail. He was lodged in Ward , No.2, Jail No.1. The said accused i.e. Charles Sobhraj was transferred to Jail No.3 on April 28,1985 in Tihar Jail. Charles Sobhraj Along with other accused persons/under trials escaped from Jail No.3 on March 16,1986. The petitioner did not escape. However, he was charged to have been involved in the jail break case Along with Charles sobhraj and others. It was alleged against the petitioner that it was he who helped and financed the escape of Charles Sobhraj and others. In this connection, F.I.R. No. 139 was lodged with police station Janakpuri against 23 accused persons, including the petitioner. Later on a charge sheet was filed after the completion of investigation against 23 persons, including the petitioner on June 3,1986 in the court of the Chief Metropolitan Magistrate.

(3) The petitioner never knew Charles Sobhraj or any other accused persons who escaped from the jail on March 16,1986. In fact, the petitioner never stayed even for a single day in the said Ward with Charles Sobhraj. The allegations leveled against the petitioner are false and preposterous and motivated. There is no prima facie case against the petitioner inasmuch as there is no evidence against the petitioner to connect him with the escape of Charles Sobhraj or any other accused persons from jail. The impugned orders dated January 18,1994 and January 20,1994 were passed by the learned Additional Sessions Judge mechanically and without application of mind and without consideration of the documents and the statements of witnesses on record and without considering the arguments and

submissions made by the counsel for the petitioner. The learned Additional Sessions Judge was wrong in his conclusion that there was sufficient evidence to frame charges against the petitioner. Along with other accused persons under Sections 224/223/129/328; 328 and under Section 224 read with Sections 109 and 120B of the Indian Penal Code vide orders dated January 18, 1994 and January 20, 1994. Aggrieved and dis-satisfied with the said orders the petitioner has approached this Court for the quashment of the charges.

(4) Learned counsel for the petitioner Mr. P.N. Lekhi, Senior Advocate, has contended with great zeal and fervour that there is absolutely no evidence against the petitioner for framing of the charges under sections 224/223/129/328; 328 and 224 read with Sections 109 & 120B of the Indian Penal Code. The learned Additional Sessions Judge thus fell into a grave error while coming to the conclusion that there was sufficient evidence to proceed with the case against the petitioner and charged him under the said Sections.

(5) The learned counsel has urged that Charles Sobhraj on the relevant date of his escape was not a prisoner inasmuch as he was neither a convict nor under trial. Thus the provisions of Section 224 which deal with the resistance or obstruction by a person on his lawful apprehension cannot be made applicable to the facts of the present case. Hence the petitioner cannot be charged with helping and financing the escape of Charles Sobhraj. There is absolutely no evidence on record to show even prima facie that the petitioner ever handed over any amount to Charles Sobhraj. Thus there is no passing of money between the petitioner and Charles Sobhraj. Hence how the petitioner can be said to have financed the conspiracy with regard to the escape of the said Charles Sobhraj from the custody. Assuming arguendo, that the petitioner passed on certain amounts to Charles Sobhraj in order to assist and help him, can he be held responsible for the misuse of the said amount? Charles Sobhraj has sufficient funds at his command and disposal. He was not in need of any money.

(6) The fact is that the Government was not at all serious with regard to the extradition of Charles Sobhraj otherwise it is inconceivable why he was not extradited till March 16, 1986 when his appeal against the extradition order was

finally disposed of by the High Court on November 12,1985.

(7) The learned P.P., Mr. R.D.Jolly, on the other hand, has contended that there is ample evidence prima facie to show that it was the petitioner who financed the escape of Charles Sobhraj from the Central Jail, Tihar on March 16,1986. There is sufficient evidence to show that it was the petitioner who sent for Diljit Singh Bhalla alias Happy from the U.K. He opened an N.R.I, account No. 3045 in December 1985 with 50 US\$. Lakshmi Sethia, wife of the petitioner, thereafter got deposited 99,000 dollars in the said account on March 4,1986. Diljit Singh withdrew Rs. 3 lacs from the said account on March 7,1986 and subsequently there was a withdrawal of Rs. 6.5 lacs on March 14,1986. According to the learned Pp the petitioner evinced a keen interest in the conspiracy to escape by Charles Sobhraj as the petitioner was an accused in a bank fraud case Along with one Amarjit Singh. One Swami Satsangi was a witness against the petitioner. The petitioner wanted to get him liquidated. It was in this connection that the petitioner sought the help of Charles Sobhraj who was not found lacking and agreed to do the needful.

(8) It is manifest from above that the petitioner through the present petition has challenged the legality and validity of the orders dated January 18,1994 and January 20,1994 passed by the learned Additional Sessions Judge whereby the learned lower court came to the conclusion that prima facie there was sufficient evidence on record to proceed with the case against the petitioner under Sections 224/223/129/328, 328 read with Sections 109 and 120B of the Indian Penal Code and thus framed the charges under the said sections.

(9) Chapter xviii of the Criminal Procedure Code . deals with the trial before a Court of Session. Section 228 of the said Chapter deals with the framing of charges. Since we are concerned with the construction of the said section, it would be just and proper to examine the provisions of the said section before proceeding any further in the matter. It is in the following words:-

'228(1).If, after such consideration and hearing as aforesaid the Judge is of opinion that there is ground for presuming that the accused has committed an offence which - (a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order transfer the case for trial to the Chief

Judicial Magistrate and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report; (b) is exclusively by the Court, he shall frame in writing a charge against the accused. (2)

(10) Since Section 227 of the Criminal Procedure Code . deals with the discharge of the accused in case the Court is of the view that there i.s no sufficient ground for proceeding against the accused, the provisions of the said Section can be adverted to with profit. It reads as under- If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

(11) The cumulative effect of the two Sections of Criminal Procedure Code . alluded to above, is that a charge can be framed against an accused in those discerning few cases where the prosecution has placed on record sufficient evidence to show prima facies a case against him under a particular provision of law. In case the prosecution fails in its primary duty to show a prima facie case to proceed against the accused i.e. when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 of the Criminal Procedure Code .

(12) It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt to the accused. At this primary stage of framing of charge the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Being so satisfied the Court would frame a charge.

(13) In view of the above the Court is under no obligation to meticulously sift the evidence in order to find out as to whether the evidence placed on record and collected during the course of investigation is sufficient enough to lead to the

conviction of the accused. If the material placed on record by the prosecution in the form of the evidence is sufficient enough to enable the Court to raise a strong suspicion against the accused, in that eventuality the Court would be justified in framing the charge.

(14) A Court of Law at the stage of framing of charge, would not go into the defense of the accused, if any, put forward by him and considering the same would not refuse to frame the charge as that is not the proper stage to consider the defense, which is to be examined at the time of the disposal of the case.

(15) If the two views are possible of the evidence placed on record by the prosecution and the Judge is satisfied that the evidence no doubt gives rise to a suspicion but not to a grave suspicion, the Court will be fully justified in passing an order of discharge.

(16) A Court while framing the charge is not to play the role of a puppet in the hands of the prosecuting agency who is pulling the strings from behind and dance to his tune. Rather a duty has been cast on the shoulders of a Court to apply his own mind and to form his own opinion as to whether there is sufficient ground to proceed against the accused on the basis of the evidence against him.

(17) After a close scrutiny of the evidence the court finds that the evidence placed on record even if accepted as correct, without being challenged in cross-examination or rebutted by defense, cannot show that the accused committed the offence then the court would discharge the accused as the prosecution of the accused in the above circumstances would be sheer an exercise in futility. 18. I am fortified in my above views by the observations of their Lordships of Supreme Court as reported in : 1979 CriLJ1390 , Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja and Others:-

'It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar Vs. Ramesh Singh, : 1977 CriLJ1606 , the truth,

veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of that offence.

(19) A matter with regard to framing of charge again came up for consideration before their Lordships of the Supreme Court as reported in : 1977 CriLJ1606 *State of Bihar v. Ramesh Singh*. Their Lordships of the Supreme Court laid down the following guidelines for the courts below to be followed for framing of the charges:-

"READING Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defense of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At this stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the regions 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. 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 defense evidence, if any, cannot show that

the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under Section 227.'

(20) The above view was again reiterated in : 1979 CriLJ154 Union of India v. Prafulla Kumar Samal and another.-

'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. 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. 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. In exercising his jurisdiction under Section 227 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 docs 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.'

(21) I am also tempted here to cite the observations of their Lordships of the Supreme Court as reported in 1990 Cri L.J. 1869 Niranjana Singh Karam Singh Punjabi Jitendra Bhimraj Bijja and others:-

'From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and 'documents on record with a view to finding out if the facts emerging there from taken at their facie value disclose the existence of all the ingredients constituting the alleged offence. The Court may 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.'

(22) With the above background let us now see as to whether the prosecution in the instant case has come out with a case which prima facie discloses the commission of an offence under Sections 224, 223, 129, 328 read with Sections 109 and 120B of the Indian Penal Code by the petitioner herein?

(23) The case of the prosecution as set out in the report under Section 173 Code of Criminal Procedure is that the petitioner herein was hand in glove with one Charles Sobhraj. Both of them were in Tihar jail at the relevant time. The petitioner is alleged to have conspired and actively helped in the escape of Charles Sobhraj and others from the lawful custody and thereby committed offences under Sections, referred to above.

(24) It has been alleged in para 4 of the Charge sheet that the petitioner developed an intimacy with accused Charles Sobhraj as he helped the petitioner in meeting with the members of his family. The petitioner was thus very much obliged to Charles Sobhraj. Accused Diljit Singh Bhalla (a) Happy, a nephew of the petitioner visited India in November, 1985 at the instance of the petitioner. He opened a Nri Account bearing No.34045 in Grindlays Bank in Connaught Place in December, 1985 with 50 Us Dollars. Mrs.Laxmi Sethia, wife of Rajinder Singh Sethia thereafter remitted a sum of 99,000.00 Us Dollars in the said account on 4th March, 1986. Accused Diljit Singh withdrew from the said account Rs. 3 lacs on 7th March, 1986 and Rs. 6.5 lacs on 14th March, 1986 and expended the said amount within a week prior to the escape of Charles Sobhraj obviously to meet some expenses of the conspiracy to escape.

(25) The petitioner joined the said conspiracy as he has got his own axe to grind. The petitioner was facing trial in a bank fraud case Along with one Amarjeet Singh.

One Swami Satsangi was an important witness in the said case. The petitioner wanted the liquidation of the said witness. He issued in connection therewith a slip whereon he jotted down 'Please pay to the bearer of this letter Dollars 20,000, many thanks Raj'. The same slip was handed over to one Gordon Green all . Gordon Green all was to execute the said plan with the help of one Keith William in Australia. He was to receive the said 20,000 dollars by way of part payment by producing the same slip before Mr.Buthoria who was one of the Directors in Esal Commodities Ltd. in London (a firm owned by the petitioner). Gordon Green all is said to be an international gun runner.

(26) Shri Diljit Singh Bhalla withdrew a sum or Rs. 9.5 lacs from his Nri Account, referred to above, during the period 7th March, 1986 to 14th March, 1986. A part of the said amount was passed on to Charles Sobhraj under instructions from accused Rajinder Singh Sethia through Mrs. Sneh Sanger.

(27) Accused Charles Sobhraj agreed to gel Public Witness Swami Salsangi, a prosecution witness against the petitioner in the above said bank case eliminated through his contacts abroad. Rajinder Singh Sethia agreed to pay 50,000 dollars for the said job. The petitioner gave a sum of Rs. 1 lac to Charles Sobhraj through Ms.Sneh Sanger on three different occasions. The last payment was made on 7th March, 1986. On instructions from Charles Sobhraj,' Sethia gave a sum of Rs. 24,000.00 to Ms.Sneh Sanger and the same was used in the escape of Charles Sobhraj. A receipt to this effect was recovered from Snch Sengar's room No.70, P.G. Women's Hostel of Delhi University.

(28) Charles Sobhraj who was facing extradition proceedings and who master minded this conspiracy mainly to avert his extradition to Thailand got himself transferred to jail No.3.

(29) It is manifest from the facts canvassed above, that the only charge leveled against the petitioner is that he had financed the conspiracy hatched by Charles Sobhraj in order to avert and ward off his extradition to Thailand. Surprisingly enough there is absolutely no evidence on record to show and prove prima facie that in fact the petitioner did so.

(30) The only evidence placed on record by the prosecution is that a Nri account No.34045 was opened in the name of the accused Mr.Diljit Singh Bhalla with Grindlays Bank Ltd., 10-E, Connaught Place, New Delhi. There is further a document to show that a sum of 99,000 dollars was remitted in the said account by one Laxmi Sethia wife of the petitioner on 4th March, 1985. There is further evidence on record to prima facie show and prove that Rs. 3 lacs were with drawan by Mr.Diljit Singh Bhalla on 7th March, 1986 and a sum of Rs. 6.5 lacs was with drawan on 14th March, 1986.

(31) The learned public prosecutor Mr.Jolly on the basis of the said document has contended that it goes to show prima facie that the said amounts were used by Charles Sobhraj in order to finance the alleged conspiracy.

(32) I am sorry, I am unable to agree with the contention of the learned counsel. Admittedly the said account was opened by a co-accused known as Diljit Singh Bhalla. The amounts, adverted to above, were also with drawan by Diljit Singh Bhalla. There is absolutely not even an iota of evidence on record to show and prima facie prove as to how the said amounts were handed over to Charles Sobhraj for the purpose of financing the said conspiracy. There is absolutely no evidence on record as to in what way the said amounts were used by Charles Sobhraj. Everything it appears has been left by the prosecution in the realm of imagination. Admittedly Shri Rajinder Sethia did not escape Along with Charles Sobhraj and others from jail. Had the petitioner been a co-accused conspirator, he would have also definitely made use of the said conspiracy by escaping from the jail.

(33) The petitioner is alleged to have financed the conspiracy as he sought the assistance of Charles Sobhraj in liquidating Swami Satsangi, a prosecution witness against the petitioner. The petitioner is alleged to have given a slip to Gordon Green all in connection therewith by writing thereon 'Please pay to the bearer of this letter dollar 20,000, many thanks Raj'. Neither the said slip nor a photo copy thereof was placed on record in order to show and prima facie prove that in fact Charles Sobhraj agreed to liquidate Swami Satsangi, the alleged prosecution witness. Thus there is absolutely no evidence on record to show and

prove that in fact there was any motive on the part of the petitioner to have joined the said conspiracy.

(34) The learned counsel for the petitioner, Mr.Lekhi has then drawn my attention to an order dated 19th January, 1987 passed by this court on the bail application of the petitioner. The learned counsel for the petitioner in support of his arguments, that there is absolutely no evidence to connect the petitioner with the alleged conspiracy to escape, has led me through the concluding line of the said order wherein the learned public prosecutor on being asked as to what was the evidence against the petitioner to connect him with the alleged conspiracy the learned Public Prosecutor failed to point out any. I am tempted to cite a few lines from the said order:-

'I have repeatedly asked Mr.Sodhi Teja Singh to tell me what is the evidence or the circumstances on the basis of which an inference of conspiracy can be drawn against the petitioner but he has failed to point out any. Without further comments on merits of the case, I find that there can't be a better case than the one with which I am dealing.'

(35) It has next been contended by the learned counsel for the petitioner that Charles Sobhraj was neither a convict undergoing a sentence nor an undertrial facing a trial before a court of law. He was in fact a State Prisoner. Thus he was not a prisoner to be proceeded against judicially. He was not in custody within the domain of Section 224 of the Indian Penal Code. Hence the provisions of Section 224 cannot be made applicable. Thus when Charles Sobhraj escaped from the jail no offence is alleged to have been committed by him. The contention of the learned counsel no doubt is an ingenious one but can be brushed aside without much difficulty.

(36) Admittedly it was not only Charles Sobhraj who escaped from the jail on March 16,1986. There were besides him other persons also who were either convicts or undertrials who escaped from the jail. Thus the provisions of Section 224 would be very much applicable to the facts of the present case.

(37) Furthermore, a close scrutiny of Section 224 reveals that the legislators in their wisdom have used the words that whoever is in lawful custody escapes or attempts to escape from that custody shall be punished with imprisonment of either description for a term which may extend to two years, or fine, or with both. There is no dispute with regard to the fact that Charles Sobhraj was in lawful custody and he escaped there from. Thus the instant case very much falls within the ambit of Section 224 of the Indian Penal Code.

(38) In the above circumstances, I am of the view that even if the entire case of the prosecution against the petitioner is taken to be correct, before it is challenged in cross examination or rebutted by the defense evidence, if any, does not show prima facie that the accused committed the alleged offence with which he has been charged. Thus there was absolutely no justification for framing the charge against the petitioner in order to proceed with the trial.

(39) The petitioner is thus entitled to succeed. Orders dated January 18,1994 and January 20,1994 whereby the charges were framed against the petitioner are hereby set aside. The petitioner is discharged. His bail bonds are cancelled.

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