

Bashir Khan and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-20-2000

Reported in : 2001(1)WLN270

Judge : Shiv Kumar Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 91, 227, 228, 239, 240 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B; Indian Evidence Act, 1872 - Sections 10

Appeal No. : S.B. Criminal Revision Petition No. 520 of 1999

Appellant : Bashir Khan and ors.

Respondent : State of Rajasthan

Advocate for Def. : K.N. Garg and; A.N. Khan, Advs.

Advocate for Pet/Ap. : S.R. Bajwa, Sr. Adv. and; V.R. Bajwa, Advs.; Samundra Si

Judgement :

ORDER

Hon'ble Sharma, J.

1. 'It is necessary for the trial Judge who decides to frame charge after evaluation of material on record, to pass a reasoned order?' This moot question requires

consideration in the instant case.

(2). Bench of Hon'ble two Judges of the Supreme Court in Kanti Bhadra Shah vs. State of West Bengal (1), indicated that if the trial court decides to frame charge, there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself, prima facie, shows that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. A Magistrate is required to record his reasons for discharging the accused in view of section 239 Cr. P.C., but under section 240 Cr. P.C., there is no such requirement if the Magistrate forms his opinion about framing of charge. Even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide section 227 Cr. P.C.). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge (section 228 Cr. P.C.),

(3). Learned Senior Counsel, Shri S.R. Bajwa canvassed that before framing charge, the trial Judge, after considering and examining material on record, has to form opinion as to the existence of ground for presuming that the accused has committed offence. By referring dictionary meaning of the words 'Consider', 'opinion' and 'ground', learned counsel contended that 'opinion' is the formal written expression by a court of the reasons and principles of law upon which decision in a case is based. Therefore, if the trial Judge is of the opinion that charge should be framed, he must assign reasons. In support of his contention, learned counsel invited my attention to the various decisions of the Apex Court.

(4). State of Karnataka vs. L. Munnyswamy (2), was the case wherein the Hon'ble three Judge Bench of Hon'ble The Supreme Court indicated thus :

'Under Section 227 Cr. P.C. if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Recording of reasons is to enable the superior court to examine correctness thereof. Under Sec. 482 Cr. P.C. the High Court is entitled to quash a proceeding if continuing of the same would amount to abuse of

the process of court or ends of justice so requires. For the purpose of determining whether there is sufficient ground to proceed against the accused, the court possesses, comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such as could reasonably entail conviction.'

(5). Bench of Hon'ble two Judges' of the Supreme Court in U.O.I, vs. Prafulla Kumar (3), propounded thus:

'While exercising powers under Sec. 227 Cr. P.C., the court has undoubted power to sift and weight the evidence for the limited purpose of finding out existence of prima facie case against accused. If two views are equally possible, benefit may be given to the accused even at the stage. Court cannot act merely as a Post-office or a mouth-piece of the prosecution. Court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced as also basic infirmities appearing in the case.'

(6). In Radhey Shyam vs. Kulni Bihari (4), it was held as Under;

'At the stage of framing charge meticulous consideration of evidence and material is not called for.'

(7). In Niranjana Singh Karam Singh vs. Jitendra Bhimraj and Ors. (5), was the case wherein it was observed as under:

'At the stage of proceeding under Sec. 227/228 Cr. P.C., court is required to evaluate the material and documents on record when taken at face value, disclose existence of all ingredients constituting the alleged offence. For a limited purpose the court may sift the evidence because even at the initial stage the court cannot accept as gospel truth all that the prosecution says even when it militates against common sense and broad probabilities of the case.'

(8). Bench of Hon'ble three Judges of the Supreme Court in State of Maharashtra & Ors, vs. Somnath Thapa & Ors. (6), indicated as under:

'At the stage of framing of charge probative value of materials available on record cannot be gone into. If the court thinks that the accused might have committed the offence, it can frame the charge.'

(9). *Satish Mehra vs. Delhi Administration* (7), was the case wherein the Hon'ble Supreme Court observed as under:

'While proceeding under Section 227/228 Cr. P.C. the Sessions Judge is within his powers to consider even those materials which the accused may produce at that stage. Both at the stage under section 239 Cr. P.C. and u/s 227 Cr. P.C., if the accused succeeds in producing any reliable material which might fatally affect the very sustainability of the case, it would be unjust to suggest that such material shall not be looked into. The word 'ground' includes insufficiency of evidence to prove charge.'

. (10). In *State of M.P. vs. S.B. Johari & Ors.* (8), their Lordships of the Supreme Court held thus:

'At the stage of framing charge, Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. No need to appreciate the evidence to arrive at the conclusion that the materials produced are sufficient for convicting the accused. Charge can be quashed only if after accepting the prosecution evidence fully it falls short of showing that the accused had committed the offence.'

(11). *G. Sagar Sulri & Anr. vs. State of U.P. and Ors.* (9), was the case wherein it was held that:

'Before issuing process, a criminal court has to exercise a great deal of caution. Matter essentially of civil nature should not be permitted to be given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. While exercising jurisdiction under section 482 Cr. P.C. High Court should not examine the matter superficially. The jurisdiction under sec. 482 Cr. P.C. has to be exercised to prevent abuse of process of any court or otherwise to secure ends of justice.'

(12). State of T.N. vs. J. Javalalltha (10), was the case wherein it was observed as under:

'For a charge of conspiracy u/s 120-B, 1PC, keeping in view the scope of section 10 of the Evidence Act, the court can draw presumption against the accused. At the time of framing charge, the court is not required to weigh pros and cons of all implications of materials nor sifting the materials.'

(13). In Om Prakash Sharma vs. C.B.I. Delhi (11), it was held asunder:

'Though powers u/s 91 Cr.P.C. are wide and unlimited yet due to inbuilt limitation the powers take colour and shape from the stage or point of time of its exercise. It is in cases where the accused could produce any reliable material, at the stage of framing charge and such material demolishes the very sustainability of the case, refusal to look into such material may result in injustice. All the more necessary to avert an exercise in futility at the cost of valuable judicial/public time.'

(14). In State of M.P. vs. Mohan Lal Soni (12), it was observed thus:

'Before framing charge, the trial Court is under obligation to consider the documents relied/referred by accused and the summoning for which he prays for.'

(15). In K. Ramakrishna & Ors. vs. State of Bihar & Anr. (13), it was held that:

'If upon admitted facts and documents relied upon by prosecution and without weighing or sifting of evidence, no case is made out, proceedings are required to be quashed.'

(16). In State of Delhi vs. Cyan Devi and Ors. (14), it was held that:

'At the stage of framing of charge, the court is to examine the material only with a view to satisfy that a prima facie case of commission of alleged offence has been made out. Court may quash charge u/s 482 Cr. P.C. only when there are strong reasons to hold that in the interest of justice and to avoid the abuse of process of court charge needs to be quashed and that too in exceptional cases.'

(17). In State By C.B.I. vs. S. Bangarappa (15), it was observed that:

'At the stage of framing charge court should not evaluate the evidence by deciding its worth or credibility.'

(18). After having closely considered the aforequoted judicial pronouncement of the Apex Court, I am of the opinion that the Trial Judge, at the stage of framing of charge, is to examine the material on record only with a view to satisfy that a prima facie case of commission of alleged offence has been made out. The trial Judge should not evaluate the evidence by deciding its worth or credibility. It is not necessary to appreciate the evidence to arrive at the conclusion that the materials produced are sufficient for convicting the accused. Probative value of materials available on record cannot be gone into. If the trial Judge is of the opinion that the accused might have committed the offence, he can frame the charge. The trial Judge is within the powers to consider even those materials which the accused may produce at that stage. Meticulous consideration of evidence and material is not called for, at the stage of framing charge.

(19). A bare look at the sections, 227 and 239 Cr. P.C. demonstrates that a trial Judge is only required to record his reasons for discharging the accused, but upon considering the material on record and after hearing the both sides, if the trial Judge has formed the opinion to frame charge, he is not required to record his reasons in view of section 228 and 240 Cr. P.C. Legislature has deliberately omitted requirement to record reasons from sections 228 and 240 Cr. P.C. After close scrutiny of sections 227, 228, 239 and 240 Cr. P.C. their Lordships of the Supreme Court in Kami Bhadra Shah's case (supra) propounded that if the trial Judge decides to frame charge, there is no legal requirement to record reasons. Framing of charge itself, prima facie, shows that the trial Judge has formed an opinion upon considering the material on record that there is ground for presuming that the accused has committed the offence.

(20). In the other judicial decisions, sections 227, 228, 239 and 240 Cr. P.C. have not been so closely looked upon as has been considered in Kanti Bhadra Shah's case (supra) and I have no opinion but to hold that it is not necessary for the trial Judge who decides to frame charge after evaluation of material on record to pass a reasoned order.

(21). Let the revision petition be listed for further arguments.

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