

**Binode Behari Dey Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/871006](http://sooperkanoon.com/871006)

**Court :** Kolkata

**Decided On :** Jan-15-1993

**Reported in :** (1993)1CALLT265(HC)

**Judge :** Gitesh Ranjan Bhattacharjee, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 239 and 240; ;Indian Penal Code (IPC) - Sections 120A, 120B, 406 and 420

**Appeal No. :** Cr. Rev. No. 284 of 1992

**Appellant :** Binode Behari Dey

**Respondent :** The State

**Advocate for Def. :** Sasanka Ghosh, Adv.

**Advocate for Pet/Ap. :** Durga Pada Dutta and ;L.M. Dutta, Adv.

**Disposition :** Application allowed

**Judgement :**

**Gitesh Ranjan Bhattacharjee, J.**

1. The petitioner, Binode Behari Dey has filed this revisional application for quashing the charge framed against him by the learned Metropolitan Magistrate, 16th Court, Calcutta in G.R. Case No. 5022 of 1981 under Sections 406/420/120B

of the Indian Penal Code. It is the contention of the petitioner that there are no materials justifying the framing of charge against him. The gist of the allegations in the F.I.R. lodged by the complainant, Smt. Surabala Dutta is that she fell in great financial hardship after her husband's death and at that time one Banbehari Dey, the accused named, in the F.I.R., who is one of her relations dishonestly induced her to part with her gold ornaments so that the same might be used in business and in return he promised to give her Rs. 300/- per month. It is also the allegation that some ornaments of the complainant were kept by Banbehari Dey in locker of a Bank opened in the joint names of the complainant and Banbehari, but barring some initial payments of paltry amounts Banbehari did not give any money to the complainant and also did not return the ornaments and rather denied everything. After completion of investigation police submitted charge-sheet against the F.I.R. named accused Banbehari Dey and also against one Ramkrishna Dey and the present petitioner Binode Behari Dey. The learned Magistrate by his order dated 1st August, 1991 held that there are materials on record to frame charge against all the three accused persons under Sections 406/420/120B of the Indian Penal Code and accordingly by his order dated 26th September, 1991 he framed charge against all the three accused under the said sections. Of the three accused the petitioner Binode Behari has moved this Court for quashing the charge framed against him on the ground that there are no materials to justify the framing of charge so far he is concerned. After going through the materials which are required to be considered at the stage of considering the question of framing of charge, as placed before me, I find that framing of charge against the present petitioner was not justified.

2. The petitioner, it may be mentioned, is a brother of the F.I.R. named accused Banbehari Dey. Neither in the statements recorded under Section 161 Cr.P.C. nor in the F.I.R. there is any allegation that the present petitioner induced or did anything for inducing the complainant to part with her ornaments, in favour of Banbehari. The only involvement of the present petitioner in the matter, as it appears from the materials, is that after Banbehari denied everything as alleged when the brother of the complainant and another relation approached Banbehari and asked him to return the ornaments or to tell where the ornaments were lying so that they could get the same released, the petitioner was also present there

and he told them that he had already learnt everything from Banbehari and he would look into the matter so that the ornaments could be returned. The petitioner also later gave a list of ornaments which were lying pledged in a jewellery shop at Bowbazar. It also appears that some statement of the accused Banbehari was tape-recorded where Banbehari stated that for getting the pledged ornaments released he would require 40/45 thousand rupees and if that money is paid to him, he and his brother would then go and get the ornaments released, but he would not take with him anybody else. Now practically these are the only materials which refer to the present petitioner in connection with this matter. These materials only indicate that when Banbehari denied everything and the complainant and some of her relations approached Banbehari, at that stage the petitioner who is a brother of Banbehari appeared in the scene. Even then what his role He, it seems, involved himself at that stage for the purpose of looking into the matter so that the matter might be settled and also later furnished to the complainant a list of ornaments lying pledged in a jewellery shop. There is indeed nothing unnatural or foul in the conduct of the petitioner at that stage by offering himself to lend his services for settling the matter when it came to be known that there were certain allegations and incidents relating to the ornaments of the complainant which involved his brother Banbehari.

3. The materials which concern the present petitioner are evidently inadequate for framing of charge against the petitioner under Sections 406/420 I.P.C. and I must say these materials are also inadequate for framing a charge against him under Section 120B, I.P.C. regarding conspiracy Criminal conspiracy has been defined in Section 120A, I.P.C. By that definition when two or more persons agree to do or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided of course no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. In the present case the materials concerning the petitioner are plainly inadequate to attract the definition of criminal conspiracy as contained in Section 120A, and to justify the framing of charge under Section 120B, I.P.C. against the petitioner. The materials only show that the petitioner appeared in the scene when some relations of the complainant ap-

proached Banbehari for realisation of the ornaments given to said Banbehari by the complainant on being induced by him to do so. The petitioner being a brother of Banbehari seems to have offered his services at that stage to get the matter settled and there is nothing unusual in such conduct of the petitioner, he being a brother of Banbehari. It seems that he took information and located where and what items of ornaments were pledged and furnished a list of the same to the complainant. That does not indicate that he entered into any prior conspiracy with his brother Banbehari for inducing the complainant to part with the ornaments in favour of Banbehari or for misappropriating the same.

4. In considering the question of framing charge in a warrant procedure Case on police report one has to bear in mind the provisions of Section 239 and Section 240 of the Criminal Procedure Code. Section 239 says that if upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. Section 240 says that if upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, in that case he will frame charge against the accused. The provisions of the two sections are indeed required to be read and considered together in considering whether charge should be framed against the accused or he should be discharged. The accused has to be discharged if the Magistrate considers the charge brought against the accused to be groundless but if the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence which is triable under the said chapter and which he is competent to try and punish adequately, in that case he has to frame charge against the accused.

5. What is required to be considered in connection with the question of framing of charge has been discussed by the Supreme Court in Superintendent and Remembrancer, Legal Affairs v. Anil Kumar, : 1979 CriLJ1390 . There it has been held that the Magistrate at that stage has to consider the question as to framing of charge on a general consideration of the materials placed before him by the

investigating police officer and 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 that stage and that 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. In *Union of India v. Prafulla Kumar*, : 1979 CriLJ154 in summarising the principles in the matter it has been laid down inter alia by the Supreme Court (at page 369) that while considering the question of framing of charges the Judge has 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, and 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. It has been further laid down that 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. It is therefore evident that where in view of the materials placed before the court a grave suspicion arises against the accused the court would be justified in framing charge against him, but even in such case the materials must make out a prima facie case against the accused as has been laid down in *Union of India v. Prafulla Kumar* (ibid). Therefore it is evident that for justifying the framing of charge the materials must make out a prima facie case against the accused. At that stage, however, the court need not arrive at a finding or opinion that the materials even on roving enquiry is bound to lead to the conclusion of guilt of the accused. It may be that the materials may ultimately on trial turn out to be laconic or unworthy of credence and prove inadequate for a conviction but that is not a matter for consideration at the stage of framing of charge. If the materials at that stage make out a prima facie case then the framing of charge will be justified even if there are certain suggested factors and aspects which, if and when established may knock out the prima facie import of the materials appearing against the accused. The grave suspicion which would justify framing of charge however must still make out a prima facie case against the accused even at that stage in the sense that there

must be materials which when accepted at face value are capable of sustaining a conviction. Where however the materials produced or relied upon do not make out even a prima facie case against the accused or in other words when there are no sufficient materials which even when accepted at face value would show that the accused has committed any offence, in that case there is no question of framing charge.

6. In this connection, a distinction has to be borne in mind regarding the import of 'grave suspicion' that would justify the framing of charge for trial which is something quite different from the suspicion which may reasonably lead the investigating officer to direct investigation against the suspected person. During investigation stage there may appear certain clues to the investigating officer which may justify the investigation to be directed against a suspected person on the basis of such clues even if such clues may not by themselves be sufficient to establish or indicate involvement of the suspected person in the commission of the offence. But suspicion on the basis of some clues which may actuate the investigating officer to conduct the investigation with justification in a particular direction may not be sufficient unless something tangible is forthcoming, to make out a prima facie case against an accused for framing of charge. Suspicion or for that matter grave suspicion justifying framing of charge by the court is something different from the suspicion justifying an investigating officer at the investigation stage to conduct the investigation in a particular direction with a view to ascertaining the suspected involvement of a particular person in the commission of the offence. Grave suspicion which would justify the framing of charge against a particular accused must be based on a prima facie case made out by the materials, but if there are no such materials to make out even a prima facie case which if accepted at face value would indicate the commission of offence by the accused, in that case there is no question of framing of charge, even if there exist certain facts or circumstances giving rise to a speculation that a particular person might have been involved in the commission of offence.

7. Mere speculation on clue, in the backdrop of particular facts and circumstances, may legitimately activate police investigation in a particular direction on suspicion but mere speculative suspicion will not justify framing of charge against an

accused. For framing of charge there must be at least a grave suspicion, not speculative suspicion but a very strong suspicion founded upon materials projecting a prima facie case against the accused. In the present case there are no such materials against the present petitioner which even if accepted at face value would show the involvement of the petitioner in the commission of any of the offences he has been charged with although the fact that he furnished a list of ornaments pledged with a particular jewellery shop may lead to some suspicion or speculation justifying or even necessitating an investigation against him for ascertaining whether he had any involvement in the commission of any offence. Indeed it appears that the police made investigation relating to him but since nothing more is forthcoming, it must be held that there are no such materials against the petitioner on the basis of which it cannot be said that there exists a grave suspicion or for that matter a prima facie case for framing any charge against the petitioner. The materials which concern the petitioner even if accepted at face value do not establish the factual and circumstantial ingredients that could lead to any finding or even presumptive opinion that he committed any of the offences he has been charged with. Therefore it cannot be said that there exists even a grave suspicion against the present petitioner as would justify the framing of charge against him. The learned Magistrate it appears framed the charges against the petitioner only on the basis of speculation but the charges are not sustained even by any prima facie materials making out any case against the petitioner for putting him on trial. This revisional application is accordingly allowed and the charges framed against the petitioner are hereby quashed and the petitioner is discharged.