

Mohd. Nasir Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Jun-02-1994

Reported in : 1994CriLJ2692

Judge : M.L. Kaul, J.

Acts : Ranbir Penal Code (IPC) - Section 376; ;Jammu and Kashmir Code of Criminal Procedure (CrPC) , 1989 Svt. - Sections 435, 435(4) and 439; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 397, 397(1) and 397(2)

Appeal No. : Criminal Revision No. 55 of 1993

Appellant : Mohd. Nasir

Respondent : State and ors.

Advocate for Def. : R.S. Thakur, Adv.

Advocate for Pet/Ap. : Anil Sethi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M.L. Kaul, J.

1. This revision owes its origin to Crime No. 39 of 1993 whereupon the petitioner has been charged by the learned Sessions Judge, Rajouri, by his order dt. 31-7-1993 and directed to face trial and calendar of the case was formulated for recording of the prosecution evidence on 27-8-1993 and 28-8-1993.

2. The First Information Report broadly stated that the prosecutrix Sartaj Begum, lodged a written report with the Police Station Darhal Rajouri alleging therein that the accused Mohd. Nasir, who developed contacts with the prosecutrix, started to visit their house in absence of her father, who is working outside the State and started to stay in their house at times. On one night he had sexual intercourse forcibly with the prosecutrix and in the morning he fell at the feet of her mother assuring her, while taking Holy Quran in his hands, that he would marry the prosecutrix. After that he started coming regularly to their house and was having intercourse with her. After some months the accused came to their house with his father and confirmed the promise of his marriage with her, after again taking Holy Quran in their hands. On the intervening night of 3rd and 4th of June 1993, out of such agreed matrimonial relationship, she gave birth to a child, but the accused did not agree to marry her as a result of which a case under Section 376, Ranbir Penal Code was registered against him and on completion of the investigation the accused stood charge-sheeted, as mentioned above.

3. Aggrieved of the said order, this revision petition has been filed by the accused/ petitioner contending therein that the evidence collected and the material available on the record of the file, nowhere proved prima facie or otherwise any commission of offence by the petitioner/accused under Section 376, R.P.C. It appears that the trial Judge has pre-conceived the idea of charge-sheeting the petitioner for the offence under Section 376, R.P.C. and decided to charge-sheet him for such an offence. Although the trial Judge was not supposed to return the finding on the guilt or innocence of the accused at the stage of framing of the charge, yet it was incumbent upon the trial Judge to satisfy himself as to whether the reasonable grounds for trying the accused existed and as he has not done so therefore, the order impugned has been rendered illegal for quashment. The trial Judge did not also hear the petitioner which could be reflected from the fact that he totally refused to hear the counsel for the accused/ petitioner on the framing of charge.

Even the impugned order does not show that the arguments have been heard by the trial Judge from the counsel for the petitioner. It is, therefore, contended that in case the proceedings are allowed to continue in the trial Court, the petitioner shall not get a fair trial from that Court and in all probabilities prejudicial and biased judgment would be delivered against the petitioner.

4. Heard learned counsel for the parties and also bestowed my thoughtful consideration over the record on the file.

5. The argument of learned counsel for the petitioner Mr. Sethi, that the petitioner is apprehensive not to get a fair judgment from the trial Judge has lost its substance, for the fact that the trial Judge of the Court is transferred and the new incumbent has taken over. Hence the argument on behalf of the petitioner that the case be transferred to some other court stands automatically rejected.

6. It was argued by the learned counsel for the respondent that as the impugned order is an interlocutory order, as contained under Section 435(4-a) of the Code of Criminal Procedure, therefore, this revision for setting aside of the impugned order is not maintainable.

7. In this regard emphasis was laid by Mr. Thakur, appearing for the respondent, on 1982 Kash LJ 1 : (1982 Cri LJ 646), wherein it has been held that Section 435 of the Criminal Procedure Code creates a Bar against revision of an interlocutory order, which is retrospective in operation.

8. I am motivated to go through the aforesaid judgment passed by a Division Bench of this Court in S.K. Mahajan v. Municipality, wherein their Lordships, while answering to a question whether an order framing a charge is an interlocutory order, have replied that:

(i) The Bar created by Sub-section (4-a) of Section 435 would be attracted to it, and the Court would be powerless to revise an order framing a charge in exercise of its powers under Section 439 read with Section 435, where the challenge to the order is passed upon the merits of the main controversy, viz., whether or not the accused has been guilty of the offence charged.

(ii) Such a bar would not be, however, attracted to it, and the Court would be competent to revise an order framing a charge in exercise of its aforesaid powers, in case the challenge to the order is based upon a plea, which is independent of the main controversy and which if accepted would conclude the proceedings against the accused.

This interpretation appears to have been formed by the learned Division Bench on the basis of a case reported as *Amar Nath v. State of Haryana*, : 1977 CriLJ1891 , wherein the Apex Court had laid down the test in the following manner:

It seems to us that the term 'interlocutory order' in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory orders so as to be outside the purview of the revisional jurisdiction of the High Court.

9. In this regard it is worthwhile to refer to a Full Bench judgment passed by Rajasthan High Court, reported as *Jarnail Singh v. State of Rajasthan*, in 1992 (1) Crimes 777 : (1992 Cri LJ 810), wherein it has been held:-

That an order framing charge is an order of moment; it deprives the liberty of a citizen and puts him to jeopardy of a trial. Such an order finally rejects the plea of the accused that he is entitled to a discharge or that he is not liable to be tried. Such an order concludes the enquiry and the pre-trial proceedings against the accused. His order framing charge takes away a very valuable right of the

accused. Hence in our considered opinion, an order framing charge is not an interlocutory order within the meaning of Section 397(2), Cr.P.C. and such an order is amenable to the supervisory jurisdiction of the Court of Session and the High Court under Section 397(1), Cr.P.C. We answer the reference accordingly.

10. On perusal of the above-cited case law, of the Supreme Court, and Full Bench of the Rajasthan High Court, it in nutshell transpires that an order framing a charge concludes the enquiry or the pre-trial proceedings and thus the order framing a charge is a final order qua the accused who claims to be discharged. Therefore, the orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be the interlocutory orders, so as to be outside purview of the jurisdiction of the High Court.

11. Such revisional jurisdiction is to be exercised by the High Court within the contemplation of Sections 435 and 439 of Cr.P.C. and the High Court in exercise of its inherent powers under Section 439 of the Criminal Procedure Code can quash a criminal proceeding even after the framing of charge, if the case falls under any of the category, viz.:-

(i) Where there is a legal bar against the institution or continuance of the proceedings;

(ii) Where the allegations in the First Information Report are complete, even if they are taken at face value and are accepted in its entirety, would not constitute the offence; and

(iii) Where also distinct from its reliability or adequacy, there is no legal evidence at all to connect the accused with the offence charged.

State (Delhi Administration), in

12. It is in this perspective of the law to be seen whether the case of the petitioner falls in any of the aforesaid three categories, for which inherent powers can be exercised by this Court for quashing the criminal proceedings taken up against the petitioner/ accused, even after framing of charge.

13. I had the advantage to go through the case in hand and have found that a number of witnesses have been cited in the case. The evidence collected by the police during investigation of the case have been considered by the trial Judge and he after hearing the parties, has formulated a charge against the accused and has put him to trial. Hence this court, in no manner, is competent to adjudicate upon the evidence already collected by the police and considered by the trial Judge for the purpose of charge or discharge of the accused/ petitioner.

14. The learned trial Judge has prima facie found that there is evidence which entails in charging the accused under Section 376, R.P.C. and this Court, in no manner, feels motivated to construe that there was any legal bar against the accused for institution of the proceedings and in its continuance., and the same could not envisage that the allegations made in the First Information Report, if taken at their face value and accepted in their entirety would not in any manner constitute a prima facie evidence against the accused, for which he requires to be tried.

15. There is no legal evidence at the moment at all to disconnect the accused with the offence charged and the evidence at the moment does not fail from reliability or adequacy.

16. Having regard to these circumstances of the case, I am fortified by the view taken by the Division Bench of this court in a case reported in 1982 Kash LJ 1 : (1982 Cri LJ 646) (supra) holding that provisions of Section 435(4-a) of the Criminal Procedure Code are attracted to the case, for the fact that this Court is powerless to revise an order framing a charge in exercise of its powers under Section 439 read with Section 435, Cr.P.C, wherein the challenge to the order is passed upon the merits of the main controversy, i.e., whether or not the accused has been guilty of the offence charged. Once the accused has been charged on a challan filed against him by the police and the trial Judge, on all the evidence and the documents collected by the police concerned, has found that he has prima facie committed an offence and has charged the accused for an offence under Section 376, R.P.C. to stand trial, this court, therefore, in no manner, can interfere with the order passed by the trial Judge, which, in no manner, is infirm, illegal or

improper, as related above.

17. Hence, on perusal of the order it is found that the Public Prosecutor and the learned counsel for the accused, were present and the order impugned has been passed in their presence, after the documents and the evidence recorded by the police have been discussed and the same disclosed a prima facie case against the accused, for which reason he has been charge-sheeted and directed to be put on trial. The word that the accused was present with his counsel indicates that both the public prosecutor and the accused have been heard and no injustice has been caused to the accused/petitioner on any score and he is at liberty to demolish the case of the prosecution by cross-examining the prosecution witnesses and prove that he is innocent even by leading evidence in defence.

18. Having regard to all the circumstances of the case as discussed above, this revision petition fails and is dismissed, with its connected CMP.

19. The record of the case be returned to the trial court, for trial of the accused/petitioner, in accordance with law.

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