

Panner Selvam Vs. State

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Court : Chennai

Decided On : Dec-23-2011

Judge : S.Tamilvanan, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 397, 401, 227; Indian Penal Code (IPC) - Sections 120 (B), 364, 302, 201, 34; [Constitution of India](#) - Article 20 (3)

Appeal No. : CrI.R.C (MD).No.259 of 2010

Appellant : Panner Selvam

Respondent : State

Advocate for Def. : Mr.S.Rozario Sundarraaj, Adv.

Advocate for Pet/Ap. : Mr.Shanmugasundaram, Adv.

Judgement :

The criminal revision has been preferred under Section 397 r/w 401 of the Code of Criminal Procedure, challenging the order, dated 17.03.2010 made in CrI.M.P.No.84 of 2009 in S.C.No.155 of 2009 on the file of the Additional Sessions Judge / F.T.C.No.1, Madurai.

2. Heard the learned counsel appearing for the petitioner as well as the learned Special Prosecutor appearing for the respondent. It is an admitted fact that the

petitioner herein had been arrayed as A2 in the case pending before the Court below and subsequently, arrayed as A1 and he is facing charges under Sections 120 (B) r/w 364, 302 and 201 r/w 34 IPC, as per the final report (charge sheet). The petition in CrI.M.P.No.84 of 2009 was filed by the petitioner herein under Section 227 of the Code of Criminal Procedure, seeking discharge.

3. It is not in dispute that the petitioner's father Andi Thevar was originally arrayed as A1 in the case pending before the Court below and after the death of Andi Thevar, the petitioner became A1 in the case. As per the prosecution case, the petitioner along with his father Andi Thevar and the co-accused, A2, A3 and A4 had entered into criminal conspiracy and killed the deceased Sivaraman, another son of Andi Thevar born through his second wife at Megamalai area in Theni District during September 1998, by chopped off the head of Sivaraman and burnt the same with a criminal intention of destroying evidence.

4. As per the case originally registered, the petitioner herein was A2, his father Andi Thevar had been arrayed as A1. the petitioner is the son of Andi Thevar, born through his first wife Philomena. A3 is said to be a loyalist of Andi Thevar, A4 and A5 are relatives of A3. As per the prosecution case, A1 to A3 committed the offence of murder of Sivaraman. Since Andi Thevar died before the case was committed to the Court of Sessions, the petitioner / A2 is now arrayed as A1 before the Court below.

5. As per the prosecution case, Andi Thevar, a popular political personality had two wives, his first wife is one Philomena, through her he had three children, namely Panner Selvam, the petitioner herein, Raja and Beula. The second wife was Indirani, through her, he had two children, namely Sivaraman (deceased) and Punniavathi (L.W.No.2). It is not in dispute that Indirani, the mother of Sivaraman had committed suicide in the year 1975 due to some misunderstanding between her husband Andi Thevar and herself. After her death, Andi Thevar joined with Philomena and the children born through her and left the children born through Indirani with his sister Jothiammal at Vathalakundu.

6. As per the prosecution case, the petitioner / accused, his father and the co-accused in furtherance of the alleged conspiracy, had killed Sivaraman at

Megamalai area in Theni district through Panjaraja, one of the co-accused, by chopping of the head of Sivaraman and burnt the same with the criminal intention of destroying the evidence. Charge sheet was filed before the Chief Judicial Magistrate, Madurai against all the accused persons and after committal, at present the case is pending before the Additional Sessions Judge / F.T.C.No.I, Madurai.

7. The petitioner filed CrI.M.P.No.84 of 2009 before the Court below, seeking discharge, that was dismissed, aggrieved by which, the petitioner has come forward with this criminal revision petition, seeking discharge.

8. Mr.R.Shanmugasundaram, learned Senior Counsel appearing for the petitioner submitted that the petitioner is nothing to do with the alleged offence. Merely because the petitioner is the son born through another wife of late Andi Thevar, who was arrayed as A1, the petitioner has also been impleaded as one of the accused and that there is no material available to prosecute the case against him.

9. Learned Senior Counsel further contended that Andi Thevar was a practising lawyer, former M.L.A and leader of a political party and the petitioner herein was originally arrayed as A2, however, after the death of Andi Thevar, the petitioner herein was arrayed as A1. Based on the grounds raised in the Revision, learned Senior Counsel pleaded for discharge in favour of the petitioner herein.

10. Per contra, Mr.S.Rozario Sundarraj, learned Special Public Prosecutor submitted that as per the investigation, it has been prima facie established that the petitioner along with four other accused persons had entered into criminal conspiracy to kill Sivaraman. Having abducted the said victim in the pretext of sending him to Singapore for employment, committed murder of Sivaraman and attempted to destroy the evidence. According to learned Special Public Prosecutor, the deceased Sivaraman and his sister were children born through Tmt.Indirani, second wife of Andi Thevar and they were not maintaining cordial relationship with Andi Thevar after the suicide committed by Indirani and the petitioner herein, son born through Philomena, first wife of Andi Thevar had motive for committing the offence, since he would get the property of Sivaraman, if Sivaraman is done to death. Learned Special Public Prosecutor also brought

certain circumstances, based on materials to the notice of this Court to establish prima facie the guilt against the petitioner / accused.

11. It is not in dispute that the defacto-complainant, R.Rajendra Narasimhan had given complaint prior to the case being registered to the Inspector of Police, Thideer Nagar (D1) Police Station, Madurai, whereby he had raised allegation that the deceased Sivaraman might have been killed by the persons, including the petitioner herein. Similarly, Tmt.Punniavathi, sister of the deceased had quarrelled with Andi Thevar in public on 03.11.1999 about the missing of Sivaraman and after the incident, the petitioner / accused along with Andi Thevar and another person by name Thavasi, met her and attempted to give her a sum of Rs.50,000/- with a request that she should not take up the issue further. The petitioner / accused along with Andi Thevar and his relatives approached L.W.2 Smt.Punniavathi again on 21.06.2000 and insisted her to prevail upon the defacto complainant (LW-1) to withdraw the complaint that had been given by him with the police about the missing of Sivaraman and further, on two other occasions, the petitioner herein and others coerced LW2 Smt.Punniavathi for the withdrawal of the complaint given by LW1, Rajendra Narasimhan, the defacto-complainant against the petitioner herein and others.

12. It is also brought to the notice of this Court by the Special Public Prosecutor that after the murder of Sivaraman, the petitioner / accused and his father, Andi Thevar, while printing marriage invitation card of Raja, the younger brother of the petitioner, with an ulterior motive had deliberately printed the name of Sivaraman, stating as if he was in Singapore, so as to make it to appear to the public that Sivaraman was alive in Singapore, though Sivaraman had been killed prior to the date of the said marriage. According to the learned Special Public Prosecutor, printing the name of Sivaraman, as if he was in Singapore would show that the petitioner and others had attempted to create an impression in the public, as if the deceased was alive, though he had been done to death. The severed and disfigured head was identified by way of DNA Test that the same was the head of the deceased Sivaraman. However, the petitioner and Andi Thevar had opposed even the proposal of conducting the DNA test on the severed head of Sivaraman for the reason best known to them.

13. Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the petitioner submitted that the petitioner is entitled to be discharged on the facts and circumstances of the case and in support of his contention relied on the following decisions:

1. Selvi vs. State of Karnataka, 2010 (7) SCC 263

2. Yogesh vs. State of Maharashtra, 2009 (1) SCC (Cri) 51

3. Union of India vs. Prafulla Kumar Samal, 1979 SCC (Cri) 609

14. In Yogesh vs. State of Maharashtra, reported in 2009 (1) SCC (Cri) 51, the Hon'ble Supreme Court has held that if two views are equally possible and the Judge is satisfied that evidence produced gives rise to suspicion only, as distinguished from grave suspicion, he would be fully within his right to discharge the accused, as contemplated under Section 227 Cr.P.C. In the said decision, the Hon'ble Supreme Court has further ruled as follows : “16... The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable 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 gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible.”

15. It is well settled that Section 227 Cr.P.C contemplates the circumstances, where there could be discharge of an accused being recorded at a stage anterior in point of time for framing of charge under Section 228. It provides that upon consideration of the record of the case, documents submitted and the police report, after hearing the accused and the prosecution, the Court is expected to decide whether there is “sufficient ground” to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him. In this regard, the Court has to see whether there is any prima facie case made out to frame charges against the accused. In other words, the Court

has to consider whether there is sufficient ground to proceed against the petitioner / accused or not, in order to decide the question of discharge under Section 227 Cr.P.C. In other words, the Court has to consider whether there is sufficient ground to proceed against the petitioner / accused or not, based on the materials available on record, in order to decide the question of discharge under Section 227 Cr.P.C.

16. In *Union of India vs. Prafulla Kumar Samal*, reported in 1979 SCC (Cri) 609, the Hon'ble Apex Court on consideration of various earlier decisions, has laid down the following principles that would emerge for considering any petition seeking discharge, under the Code of Criminal Procedure : "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. 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.

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.

4. 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 basis infirmities appearing in the case and so on. This however does 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."

17. It is not in dispute that the test to determine a prima facie case would naturally depend upon the facts and circumstances of each case and for which, it is not possible to frame any rule of universal application.

18. Learned Senior Counsel appearing for the petitioner drew the attention of this Court to the Three Judge Bench decision of the Hon'ble Apex Court in *Selvi vs. State of Karnataka*, reported in 2010 (7) SCC 263, wherein results of the impugned tests of polygraphy examination and BEAP test have been treated as "personal testimony", which reads as follows : "179. We now return to the operative question of whether the results obtained through polygraph examination and the BEAP test should be treated as testimonial responses. Ordinarily evidence is classified into three broad categories, namely, oral testimony, documents and material evidence. The protective scope of Article 20 (3) read with Section 161 (2) Cr PC guards against the compulsory extraction of oral testimony, even at the stage of investigation. With respect to the production of documents, the applicability of Article 20 (3) is decided by the trial Judge but parties are obliged to produce documents in the first place. However, the compulsory extraction of material (or physical) evidence lies outside the protective scope of Article 20 (3). Furthermore, even testimony in oral or written form can be required under compulsion if it is to be used for the purpose of identification or comparison with materials and information that is already in the possession of investigators."

19. It has been made clear that the compulsory extraction of material (or physical) evidence lies outside the protective scope of Article 20 (3) of the [Constitution of India](#). It has been ruled that the protective ambit of Article 20 (3) r/w Section 161 (2) Cr.P.C guards against the compulsory extraction of oral testimony, even at the stage of investigation.

20. Paragraph 189 of the referred Judgment reads as follows : "189. In light of the preceding discussion, we are of the view that the results obtained from tests such as polygraph examination and the BEAP test should also be treated as 'personal testimony', since they are a means for 'imparting personal knowledge about relevant facts'. Hence, our conclusion is that the results obtained through the involuntary administration of either of the impugned tests (i.e. the narcoanalysis

technique, polygraph examination and the BEAP test) come within the scope of 'testimonial compulsion', thereby attracting the protective shield of Article 20(3)."

21. As ruled by the Hon'ble Supreme Court, polygraphy examination and BEAP test would come within the scope of "testimonial compulsion", which attracts the protective shield of Article 20 (3) of the Constitution.

22. Learned Senior Counsel also drew the attention of this Court to Article 21 and submitted that the same safeguards the rights of any person against cruel, inhuman or degrading treatment. The National Human Rights Commission, in this regard has published guidelines for the administration of polygraph test (Lie Detector Test) on the accused in 2000. The Hon'ble Supreme Court has made it clear that the guidelines should be strictly adhered to and similar safeguards should be adopted for conducting 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile' test. The text of these mandatory guidelines have been reproduced below:

"(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer. (iii) The consent should be recorded before a Judicial Magistrate. (iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police. (vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation. (vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record.”

23. As per Section 227 of the Code of Criminal Procedure, concerned Court having jurisdiction to decide the case is empowered to discharge the accused, 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 that behalf, found that there is no sufficient grounds for proceeding against the accused, for which the Court should record the reasons for discharging the accused.

24. It cannot be disputed that the instant case relates to a brutal murder, wherein the head of the deceased Sivaraman was severed and burnt, in order to screen the evidence. Only by conducting DNA test, scientifically it could be established that the head relates to the deceased Sivaraman. At this stage, the prosecution need not prove the guilt against the petitioner and the other accused beyond reasonable doubt. If there is prima facie material available against the petitioner and the other accused to prosecute them, that would be sufficient to proceed with the trial. In such circumstance, it is not possible for the court to decide that there is no sufficient ground for proceeding against the petitioner / accused and to record discharge.

25. It is not in dispute that when the case is solely based on the materials collected by conducting “Nacroanalysis technique” and “Brain Electrical Activation Profile” test, as per the decisions of the Hon'ble Apex Court, referred to above, based on such material, the Court cannot decide that there are sufficient grounds for proceeding against the accused. In the instant case, no material was collected by conducting “Nacroanalysis technique” and “Brain Electrical Activation Profile” test on the petitioner / accused. In other words, the petitioner / accused was not subjected to any such test against his wishes.

26. However, I am of the view that the aforesaid guidelines given in the landmark Judgment of the Hon'ble Apex Court are no way applicable to decide the discharge petition on hand, since the case is not based on materials collected “Nacroanalysis technique” or “Brain Electrical Activation Profile” test on the

petitioner / accused.

27. Learned Special Public Prosecutor, in support of his contention, relied on the following decisions :

1. K.Neelaveni vs. State, 2010 (3) MLJ (Cri) 352 (SC)

2. Sucha Singh vs. State of Punjab, 2001 SCC (Cri) 717

28. In K.Neelaveni vs. State, reported in 2010 (3) MLJ (Cri) 352 (SC), the Hon'ble Apex Court has held that while considering the application for quashing of the charge sheet, the allegations made in the FIR and the materials collected during the course of the investigation are required to be considered. However, truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial.

29. It is well settled that at the time of deciding discharge petition, Court cannot go into the evidenciary value of the supporting materials or weighing the evidence. The Court has to consider whether there is prima facie case made out, based on the materials available on record and if there is no sufficient ground to proceed with the trial, discharge could be recorded.

30. In Sucha Singh vs. State of Punjab, 2001 SCC (Cri) 717, the Hon'ble Apex Court has held that the abductors alone could tell the court as to what had happened to the deceased after they abducted the deceased. When the abductors withheld any information from the purview of court, there is every justification for drawing the inference, in the light of all preceding and succeeding circumstances adverted to above and that the abductors could have been the murderers of the deceased.

31. It is not in dispute that the name of the deceased Sivaraman had been printed in the marriage invitation card relating to the marriage of the younger brother of the petitioner as if the said deceased was in Singapore, though he was done to death prior to the date.

32. As contended by the learned Special Public Prosecutor, there is no need for printing the name of Sivaraman, as if he was in Singapore, even after the death of the said person and it could be a deliberate attempt to create an impression and to make people to believe that Sivaraman was alive with an ulterior motive. Similarly, the approach of the petitioner and his father late Andi Thevar, requesting L.W.2, Punniavathi, sister of the deceased to withdraw the complaint given by L.W.1, Rajendra Narasimhan, the defacto-complainant by raising allegation, based on suspicion that the deceased could have been done to death by the petitioner and other accused. The said circumstance would show that the defacto-complainant and others had serious suspicion on the petitioners and other accused and their involvement in the offence.

33. Learned Special Public Prosecutor further submitted that even the petitioner and his father, Andi Thevar had raised objection for the DNA test being conducted, however, the Court ordered for DNA test and that confirmed that the deceased was Sivaraman.

34. As per the materials available on record, the deceased was lastly found with Andi Thevar and as per the rulings of the Hon'ble Apex Court in Sucha Singh's case (referred to above), presumption could be drawn in the case of abduction and abductors are responsible for the murder of the deceased, when the abductors withhold the material information known to them, in view of Sections 106 and 114 of the Indian Evidence Act, 1872.

35. In the instant case, as per the materials available, the deceased was lastly found in the company of Andi Thevar and others. It is also not in dispute that the relationship with Andi Thevar was not cordial with the deceased and his sister, since their mother and the second wife of Andi Thevar had committed suicide and Andi Thevar restored his relationship with the petitioner and his other children born through his first wife.

36. The vital suspicious conduct of the petitioner and the other accused, approaching Ms.Punniavathi, sister of the deceased to withdraw the complaint, printing the name of the deceased Sivaraman, as if he was in Singapore after his death and raising objection even for DNA test being conducted on the severed

head and other circumstances would clearly show that there is a prima facie case made out against the petitioner and the other accused, as per the materials available on record.

37. In the aforesaid circumstances, in the light of the various decisions of the Hon'ble Apex Court referred to above, I am of the view that the petitioner is not entitled to get discharge at this stage.

38. As per Section 227 Cr.P.C, the trial Court has to consider the case, supporting materials and documents available on record, submitted by the prosecution and after hearing the submissions of the accused and the prosecution, only if the court is of the view that there is no sufficient ground for proceeding against the accused, it can discharge the accused by recording the reasons for so doing.

39. However, in the instant case, it has been established that Sivaraman was done to death and the severed head of the deceased was also attempted to be destroyed by burning the same, which would show that it was a deliberate murder of Sivaraman. As discussed earlier, the materials produced by the prosecution and the said conduct of the petitioner / accused would show that there is prima facie case against him and the other accused to proceed the trial against them according to law.

40. In the aforesaid circumstances, I could find no error or infirmity in the impugned order passed by the Court below, dismissing the discharge petition, so as to warrant any interference.

41. In the result, this Criminal Revision Petition is dismissed. The Court below is directed to dispose the case, solely on merits, within six months from the date of receipt of a copy of this order, uninfluenced by the findings of this Court, if any in this order. It is also made clear that the petitioner is entitled to raise all his legal defence before the trial court.