

Chamari Chaudhary and Others Vs. the State of Bihar and Another

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Court : Patna

Decided On : Apr-18-2012

Reported in : 2012CrLJ3295

Judge : Rakesh Kumar

Appeal No. : Criminal Miscellaneous No. 14316 & 7485 of 2009

Appellant : Chamari Chaudhary and Others

Respondent : The State of Bihar and Another

Judgement :

Oral Order:

Both the petitions filed under Section 482 of the Code of Criminal Procedure arise out of the same order and as such both the petitions were heard together and are being disposed of by this common order.

Heard Shri Rajendra Narayan, learned Senior Counsel, who was assisted by Shri Rakesh Kuamr Sinha No.1, learned counsel for the petitioners, learned Additional Public Prosecutor, who has appeared on behalf of opposite party no.1/State and Shri Manish Kumar, learned counsel, who has appeared on behalf of opposite party no.2/complainant.

In both the cases, petitioners have prayed for quashing of an order dated 19.1.2009 passed by the Judicial Magistrate, 1st Class, Gaya in Complaint Case No.338 of 2004/445 of 2009. By the said order, the learned Magistrate has rejected the petition filed under Section 239 of the Code of Criminal Procedure on behalf of accused petitioners for their discharge.

Learned Senior Counsel for the petitioners, while assailing the order, submits that with an oblique motive, complainant/opposite party no.2 has arrayed all the family members of her husband as accused in the complaint case without disclosing specific allegation against either of the petitioners of both the petitions.

Cr. Misc. No.14316 of 2009 has been preferred by father-in-law and mother-in-law of the complainant whereas eight petitioners in Cr. Misc. No.7485 of 2009 are close relative of the husband of the complainant. The husband of the complainant is not a party in aforesaid petitions.

It was submitted by Shri Rajendra Narayan, learned Senior Counsel for the petitioners that only on general and omnibus allegation, the court below may not be allowed to proceed with the case. He submits that partition in between the family of husband of the complainant with their other family members, had already taken place long back and husband of the complainant was residing separately. Even then in the complaint petition, all the family members have been made accused. On the ground of general and omnibus allegation, it has been prayed to set aside the order of rejection of discharge petition. He submits that time without number, the apex court has deprecated prosecution under Section 498A of the Indian Penal Code.

In support of his argument, he has referred to judgments reported in 2009(10) SCC 184 (Neelu Chopra and another Vs. Bharti) as well as 2010(7) SCC 667 (Preeti Gupta and another Vs. State of Jharkhand and another). It was submitted that in both the cases, other family members were made accused on general and omnibus allegation and the Hon'ble Supreme Court, while deprecating such prosecution, has set aside the entire prosecution against family members of the husband of the complainant of the said cases.

Learned Senior Counsel has further relied on A.I.R. 1988 Supreme Court 709 (Madhavrao Jiwaji Rao Scindia and another etc. Vs. Sambhajirao Chandrojirao Angre and others). He has specifically referred to paragraph-7 of the aforesaid judgment. For just decision in the matter, it would be appropriate to quote paragraph-7, which is as follows :

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

He submits that in Madhavrao Jiwaji Rao Scindia's case (Supra), the apex court was of the opinion that if there is bleak chance of conviction of an accused, then in that event, the superior court should interfere even at initial stage of a criminal proceeding. While relying on the judgment of Neelu Chopra's case (Supra) and Preeti Gupta's case (Supra), it was submitted that in those cases at the stage of cognizance itself, the apex court had interfered and quashed the proceeding.

Learned Senior Counsel for the petitioners has also referred to paragraphs 11 onwards of the complaint petition and submits that completely there was general and omnibus allegation, no specific allegation was made against either of the petitioners.

In view of the aforesaid facts, it has been submitted that the order impugned as well as entire proceeding against the petitioners may be set aside.

Shri Manish Kumar, learned counsel appearing on behalf of opposite party no.2 submits that in the complaint petition itself, there is specific allegation against all

the petitioners. It is not a case of general and omnibus allegation. He has referred to certain paragraphs of the complaint petition, which is Annexure-1 to the petition and submits that in view of specific assertion made in the complaint petition, the submission made by learned Senior Counsel for the petitioners appears to be misconceived.

Besides hearing learned counsel for the parties, I have also perused the materials available on record, particularly complaint petition i.e. Annexure-1 to the petition as well as the impugned order. In the complaint petition itself, there is specific allegation against all the petitioners. For reference, it would be appropriate to quote paragraphs 6, 9, 10 and 13 of the complaint petition :

“6. That a few days after, the accused persons again reiterated their unlawful demand and they intensified the atrocities upon the complainant, the abuses by all the accused persons and frequent assault particularly by the accused Vinay Kumar Chaudhary, his parents and the accused persons from Serial no.2 to 4 who are the Bhaijir and Devar, had become the routine life.”

“9. That all the accused persons conspired among themselves and under definite plan on 10.04.03 at about 9 P.M. when this complainant was sitting in her room weeping and her son was in her lap, all the accused persons came inside the room. The accused Om Prakash Chaudhary, Vinod Kumar Chaudhary were holding the Plastic-cane, full of K.Oil, while the complainant husband was holding a match- box.”

“10. That the accused Chamari Chaudhary and Kari Devi gave an order to Manju Devi, Sita Kiran Chaudhary, Sushila Devi, Kriti Prakash @ Rinki Kumari to take her son, and Pramod Chaudhary threw the complainant to the ground and shut her mouth and thereafter other accused persons to lit this complainant to fire to cause her death, whereupon the accused Om Prakash Chaudhary and Vinod Kumar Chaudhary sprinkled K.Oil upon the complainant, any how complainant raised alarm, the neighbourers arrived there and this complainant was freed from the clutches of the accused persons.”

“13. That since then, the complainant’s father and witnesses too, tried their best to convince the accused persons and to reconcile the matter, but all went in vein.”

After going through the aforesaid fact mentioned in the complaint petition, the court is of the opinion that it is not a case of general and omnibus allegation, but against each of the petitioners, there is specific allegation and as such petitioners may not get any help from the judgments of Neelu Chopra (Supra) and Preeti Gupta (Supra). So far as quashing of the proceeding at initial stage is concerned, time without number, it has been held that power under Section 482 of the Code of Criminal Procedure is to be exercised sparingly and in rarest of the rare cases. Besides this, test for examining an order of charge is disclosure of prima facie case. If the court is satisfied that there is prima facie case, then in that event, charges are required to be framed. The word „prima facie“ has elaborately been discussed in 1996(3) Criminal Law Journal 2448 State of Maharashtra etc. Vs. Som Nath Thapa etc.), particularly in paragraph-30 of the aforesaid judgment. For the just decision, it would be appropriate to quote the same :

“30. In Antulay’s case, (AIR 1986 SC 2045), Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of “prima facie” case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence.”

Meaning thereby that if the court is of the opinion that materials on record are sufficient to presume commission of an offence, then in that event, it can be said that prima facie case is made out. Besides this, the apex court in 1995(3) Criminal Law Journal 2935 (Ganesh narayan Hegde Vs. S. Bangarappa and others) has held that superior court should refrain from interfering at the initial or interlocutory stage of a criminal case. It would appropriate to quote paragraph-18 of the said

judgment, which is as follows :

“18. It is common knowledge that currently in our country criminal Courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions....”. The slow-motion becomes much slow-motion when politically powerful or rich and influential persons figure as accused. F.I.Rs. are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll: the witnesses are won over; evidence disappears; the prosecution loses interest-the result is an all too familiar one. We are sad to say that repeated admonitions of this Court have not deterred superior Courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course.”

In view of the facts and circumstances, particularly the facts disclosed in the complaint petition, the court is of the opinion that it is not a fit case for interfering with either order of rejection of discharge petition i.e. order dated 19.1.2009 or interfering with the criminal proceeding.

Both the petitions stand dismissed.

Keeping in view the fact that complaint was filed long back in the year 2004 and still the case is at the stage of charge, it is desirable to direct the court below to proceed with the case expeditiously so that the case may come to its logical end without un-necessary delay.

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