Smt.Om Wati & Anr vs State, Through Delhi Admn. & Ors on 19 March, 2001

Bench: K.T. Thomas, R.P. Sethi

CASE NO.:
Appeal (crl.) 304 of 2001

PETITIONER:
SMT.OM WATI & ANR.

Vs.

RESPONDENT:
STATE, THROUGH DELHI ADMN. & ORS.

DATE OF JUDGMENT: 19/03/2001

BENCH:
K.T. Thomas & R.P. Sethi

JUDGMENT:

SETHI,J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J The present case reflects and demonstrates the abuse of the process of the court by the accused persons who have succeeded in protracting the commencement of trial against them for about a decade. The accused have left no stone unturned to exploit the procedural wrangles to defeat the ends of justice. A learned Single Judge of the High Court of the Delhi appears to have fallen a prey to the procrastinative designs of the accused-respondent, as is evident from the cryptic order passed on 29th August, 2000 which is impugned in this appeal by special leave filed by the mother of the deceased after seeking permission from this Court. The impugned order not only reflects the non application of mind by the learned Single Judge of the High Court while discharging the respondents for the offence punishable under Section 302 of the Indian Penal Code but also demonstrates the ignoring of the correct position of law applicable on the point and catena of judgments pronounced by this Court on the subject.

The facts of the case are that in an occurrence which took place on 6.9.1991, Rajesh Kumar, the son of the appellant was beaten to death by the accused persons who were alleged to have attacked him

with weapons like Hockey Sticks, Lathis and Iron Chain of Bullet Motorcycle. The accused persons are stated to have been arrested after some days and their application for bail was dismissed by the trial court on 23rd December, 1991. The Additional Sessions Judge, being the trial court framed charges against all the accused persons on 16.7.1992 against which a petition was filed in the High Court. It is not clear but it is admitted that meanwhile the accused were released on bail by the High Court. The Criminal Revision No.97 of 1992 filed by the respondents was disposed of by the High Court after four years by quashing charges framed with direction to the trial court to pass "an order delineating reasons in sufficient detail to lend assurance to the accused, the public and the court that sufficient judicial thought is at its back". Again on 4.2.1998, the trial court as per a detailed order directed the framing of charges against the accused persons under Sections 302, 147, 148 read with Section 149 of the Indian Penal Code. The accused respondents who were on bail again ventured to accomplish their design of frustrating the judicial process by filing a Revision Petition No.87 of 1998 which has been disposed of by the High Court as per the following order:

> "Head learned counsel for the petitioners as also learned counsel for the State and perused the documents on record, in particular, the post-mortem report, I am of the view that the charge under Section 302 IPC cannot be made out. In this view of the matter, I quash the charge framed under Section 302 IPC and direct the trial court to re-frame the charge in accordance with law based upon material on record. The revision petition is allowed."

While issuing notice on 11.12.2000, we suspended the impugned order of the High Court and directed the trial court to proceed with the case. We further directed the trial court to permit the counsel of the mother of the deceased to assist the Public Prosecutor if any application is filed in that behalf.

Justifying the impugned order Shri Ranjit Kumar, learned Senior Counsel argued that as there was no evidence, worth the name to connect the accused with the commission of the crime, the High Court was justified in passing the order. He, however, was frank in conceding that the order passed by the High Court was not a speaking order. It was contended on behalf of the accused persons that as the post-mortem report did not indicate any head injury on the deceased and the doctors had further opined that "the death in this case is possibly by hepatic failure following riral hapatites", there was no necessity of putting the accused to trial. Learned counsel, however, has been very cautious not to argue on merits and rightly so because any comment by us on the merits is likely to prejudice the case of the accused or the prosecution.

Before dealing with the position of law, some facts are necessary to be noticed at this stage. As per the FIR lodged by the appellant on 7.9.1991, the deceased had objected to the conduct of accused Balraj, Narender and Vijay for having an evil eye on his cousin sister whom the aforesaid three accused used to tease and abuse whenever they got the opportunity. The deceased was subjected to the beating by the aforesaid accused persons in the month of July, 1991 regarding which a report was lodged with the police. After knowing about the beating of his son on the day of occurrence, the appellant is stated to have rushed to the spot where her son told that accused Balraj had given a Hockey blow on his head, accused Narender had given beating with chain of Bullet Motorcycle and

accused Vijay assaulted him with a lathi on the instigation of other accused persons. Statement of one Ashok Kumar, under Section 161 of the Code of Criminal Procedure (hereinafter referred to as "the Code"), who claimed to be an eye-witness, was recorded by the police on 7.9.1991 wherein he had supported what the appellant had stated about the infliction of injuries on her son. The accused persons and the deceased were arrested by the Police under Sections 107/151 of the Code. As he was beaten by the accused persons, the deceased complained of pain on all parts of his body which necessitated his admission in Deen Dayal Upadyay Hospital wherefrom he was referred to Ram Manohar Lohia Hospital, where he died at about 5 a.m. on 7.9.1991. After investigation, the final report was submitted against the accused persons who were charged by the trial court by passing a detailed order firstly on 23rd December, 1991 and after remand on 4.2.1998. The trial court dealt with all the arguments addressed before it and held that prima facie there was sufficient evidence to frame charges against the accused persons under various sections of the IPC as noticed hereinabove.

Section 227 of the Code provides that if upon consideration of record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for which he is required to record his reasons for so doing. No reasons are required to be recorded when the charges are framed against the accused persons. This Court in Kanti Bhadra Shah & Anr. vs. State of West Bengal [2000 (1) SCC 722] held that there is no legal requirement that the trial court should write an order showing the reasons for framing a charge. Taking note of the burden of the pending cases on the courts, it wa s held:

> "Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context it is pertinent to point out that 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 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.
>
> If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to

> write detailed orders at this stage, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and psychotropic Substances Act, 1985".

At the stage of passing the order in terms of Section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. This Court in Stree Atyachar Virodhi Parishad vs. Dilip Nathumal Chordia & Anr. [1989 (1) SCC 715] cautioned the High Courts to be loathe in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed.

Dealing with the scope of Sections 227 and 288 of the Code and the limitations imposed upon the court at the initial stage of framing the charge, this Court in State of Bihar vs. Ramesh Singh [AIR 1977 SC 2018] held:

> "Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under S.227 or S.228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn

at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence, if any, cannot show that the accused committed the offence, there there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under S.227."

A three-Judge Bench of this Court in Supdt. & Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunja & Ors. [AIR 1980 SC 52] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The Court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgements in Ramesh Singh and Anil Kumar Bhunja's cases (supra) this Court again in Satish Mehra vs. Delhi Administration [1996 (9) SCC 766] reiterated:

"Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short 'the Code') which reads thus:

"227. Discharge--If 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 this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an

offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is "sufficient ground for proceeding".

The trial court, in the instant case, rightly held that merely on account of the observations and the opinion incorporated in the post- mortem report, the prosecution could not be deprived of its right to prove that accused were guilty of the offence for which the final report had been filed against them. There was no ground for the High Court to interfere with the well reasoned order of the trial court by passing a cryptic and telegraphic order which is impugned in this appeal. It is not safe, at this stage, to deprive the prosecution in proving its case on the basis of the direct evidence, the statement of the deceased claimed to be admissible under Section 32 of the Evidence Act and the other documents including the inquest report allegedly disclosing the infliction of injuries on the person of the deceased which resulted in his death. The acceptance of the opinion of the doctors, as incorporated in the post-mortem report for the cause of death of the deceased being "hepatic failure following riral hapatites" cannot be accpeted on its face value at this initial stage.

We allow this appeal by setting aside the order of the High Court and upholding the order of the trial court. We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law.

It is, however, made clear that while deciding the instant case finally, the trial court will not be influenced by any of the observations made by us for the limited purposes of finding out the existence of a prima facie case against the accused, which is allowed to proceed against them in the trial court.