State Of Delhi vs Gyan Devi And Ors on 18 October, 2000

Equivalent citations: AIR 2001 SUPREME COURT 40, 2000 AIR SCW 3844, 2001 (3) LRI 434, (2001) 1 DMC 273, 2000 (2) JT (SUPP) 635, 2000 (7) SCALE 192, 2000 (8) SCC 239, 2000 SCC(CRI) 1486, 2000 (9) SRJ 401, (2000) 29 ALLCRIR 2772, (2000) 3 CHANDCRIC 142, (2000) 4 CURCRIR 154, (2001) SC CR R 782, (2000) 89 CUT LT 821, (2001) 1 EASTCRIC 77, (2001) MAD LJ(CRI) 117, (2001) 1 PAT LJR 42, (2000) 4 RECCRIR 517, (2000) 7 SUPREME 201, (2000) 7 SCALE 192, (2001) 42 ALLCRIC 39, (2001) 1 BLJ 475, (2000) 4 CRIMES 164, 2001 (1) ANDHLT(CRI) 66 SC

Author: D.P. Mohapatra

Bench: D.P. Mohapatra, Ruma Pal

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           CASE NO.:
Appeal (crl.)  888 of 2000

PETITIONER:
STATE OF DELHI

RESPONDENT:
GYAN DEVI AND ORS.

DATE OF JUDGMENT: 18/10/2000

BENCH:
D.P. MOHAPATRA & RUMA PAL

JUDGMENT:
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JUDGMENT 2000 Supp(4) SCR 270 The Judgment of the Court was delivered by D.P. MOHAPATRA, J. Leave granted.

The limited question that arises for consideration in this case is whether the High Court committed any illegality / error in quashing the charge framed under Section 304 read with Section 34 of the Indian Penal Code (for short 'I.P.C.') against respondents 1 to 3 by the Sessions Judge in exercise of its powers under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.')?

On receipt of a report regarding the murder of one Smt. Sudesh, who was the daughter-in -law of respondent 1 and wife of respondent 2, the police made an investigation and laid a challan against the three respondents under Section 173 (2) Cr.P.C. The Additional Sessions Judge, Karkardooma, on consideration of the challan and the papers filed along with it, framed charges under Section 498-A/34 IPC against all the three respondents and under Section 304/34 I.P.C. against the

respondents land 2 vide the order dated 19 February, 1996. The charge under Section 304/34 I.P.C. which is relevant for the purpose of this proceeding is to the following effect :

> "And secondly, that you Veer Bhan Gulati and Smt. Gain Devi, on or about 26.11.91 at a H.N.N-11B/11, Dilshad Garden, both in furtherance of common intention caused the death of Sudesh with intention of causing such bodily injury as was likely to cause death or with the knowledge that your act was likely to cause her death and thereby committed an offence of culpable homicide not amounting to murder punishable under section 304 IPC read with 34 IPC and within my cognizance."

Shortly after the said order was passed, the accused persons filed a revision being Criminal Revision No.l 13 of 1996 in the High Court seeking quashing of the charge under Section 304/34 I.P.C. which was disposed of by the order passed on 12.12.1997. On a perusal of the said order it appears that the High Court disposed of the revision petition accepting the suggestions made by the counsel for the petitioners (accused) and the counsel representing the State that the Addl. Sessions Judge may be directed to first record the medical evidence in the case and till the recording of such evidence presence of Gyan Devi and Raj Sehgal i.e. respondents land 2 herein in Court be exempted as they would not be required for the purposes of identification and they can be effectively defended even in their absence. The learned single Judge accepted the suggestion and accordingly issued direction to the Addl. Sessions Judge to record the medical evidence first and till that part of the prosecution evidence is concluded to exempt the aforementioned accused persons from personal appearance in Court. The operative portion of the order reads as follows:

> "In view of what has been ordered above the learned counsel for the petitioners prays that without prejudice to the pleas which the petitioners may like to take after the recording of the medical evidence, the present petition be dismissed as withdrawn. Consequently, it is dismissed as withdrawn."

In compliance with the direction in the High Court order, the Addl. Sessions Judge recorded the evidence of the doctors i.e. Dr. S.K. Verma (PW-1), Dr. Nagendra Prasad (PW-2), Dr. V.V. Gupta (PW-3) and V.P. Gupta (PW-5). Thereafter, the Public Prosecutor representing the State informed the Court that the prosecution has no other medical evidence to be led in the case. Thereafter an application was filed on behalf of the accused persons before the learned trial Judge seeking their discharge from the offence under Section 304/34 I.P.C. which was dismissed by the order dated 14 May, 1999. Thereafter, the accused persons filed an application under Section 482 Cr.P.C. assailing the legality of the order of the Addl. Sessions Judge and also seeking quashing of the charge under Section 304/34 I.P.C. framed against them. The said petition was allowed by the learned single Judge of the High Court and the charge framed under Section 304/34 I.P.C. against respondents 1 and 2 was quashed by the order passed on 7 December, 1999. The said order is under challenge in this appeal filed by the state.

From the discussions in the order under challenge it is patent that the learned single Judge has sifted the evidence of P.Ws 1 to 4 in the light of the autopsy, report -Ex. PW I/A, discussed the testimony of the doctors, taken note of the order sheet dated 3rd July, 1999 of the Trial Court in

which the statement made by Ms. Lata Sharma, A.P.P. appearing for the State that no other medical evidence is to be produced by the prosecution and has recorded the finding which reads "obviously there is absolutely no evidence on record to suggest that aforesaid injury no. 4 in Ex.PW l/A was in any way responsible for causing meningitis which disease has been opined by PW-1 to be the cause of death of said Smt. Sudesh. That being so, charge under Section 304/34 I.P.C. could not have been legally framed against the said two petitioners and the same to secure the ends of justice, needs to be quashed under section 482 Cr.P.C."

Shri Altaf Ahmed, learned Additional Solicitor General, appearing for the appellant, contended that High Court has clearly erred in passing the order quashing the charge as it has approached the case as if to determine whether the said charge framed against respondents 1 and 2 will succeed or not. This question, according to the learned Addl. Solicitor general, should not have been considered at a stage when before the entire prosecution evidence has not come on record.

Shri S.L. Aneja, learned counsel appearing for the respondents, on the other hand contended that the High Court, in the facts and circumstances of the case, has rightly quashed the charge under Section 304/34 I.P.C. against respondents land 2.

In the backdrop of the factual position discussed above, the question formulated earlier arises for our consideration. The legal position is well settled that at the stage of framing of charge the Trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C. seeking for the quashing of charge framed against them the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the Trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

In this connection we may refer to the case of Radhey Shyam v. Kunj Behari & Ors. etc. etc., [1989] Suppl. 2 SCC 572, in which a bench of three learned Judges of this Court referring to the decision in Mohd. Akbar Dar Ors. v. State of Jammu and Kashmir & Ors., [1981] Supp. SCC 80, pointed out that at the stage of framing of charges meticulous consideration evidence and materials by the Court is not required. This Court further observed:

> "The High Court has also deemed it necessary to quash the charge against respondents 1 to 3 because in its opinion the evidence proposed to be adduced by the prosecution, even if fully accepted, cannot show that respondents 1 to 3 committed any offence and referred in that behalf to the decision in State of Bihar v. Ramesh

> Singh, [1977] 4 SCC 39. We find that the High Court's conclusion about the inadequacy of the evidence against respondents 1 to 3, besides being a premature assessment of evidence, is also attributable to the wrong premises on which the High Court's reasoning is based.
>
> We, therefore, find that there was no warrant for the High Court to quash the charge against respondents 1 to 3 in exercise of its powers under Section 482 Cr.P.C..."

In the case of Minakshi Bala v. Sudhir Kumar & Ors., [1994] 4 SCC 142, this Court considered the question of quashing of charge by the High Court invoking its inherent jurisdiction under Section 482 Cr.P.C. In that context, this Court made the following pertinent observations:

> ".....To put it differently, once charges are framed under Section 240 Cr.P.C the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 Cr.P.C; nor would it be justified in invoking its inherent jurisdiction under Section 482 Cr.P.C to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.
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> Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, we further find that instead of adverting to and confining its attention to the documents referred to in Sections 239 and 240 CrPC the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case."

In a recent decision in State of M.P. v. S.B. Johari & Ors., [2000] 2 SCC 57, this Court, adverting to the question of quashing of charges in the light of the provisions contained in Ss.227 & 288, 401 & 397 and 482 Cr.P.C. did not favour the approach of the High Court in meticulously examining the materials on record for coming to the conclusion that the charge could not have been framed for a particular offence. This Court, while quashing and setting aside the order passed by the High Court, made the following observations.

> "After considering the material on record, learned Sessions Judge framed the charge as stated above. That charge is quashed by the High Court against the respondents by accepting the contention raised and considering the details of the material produced on record. The same is challenged by filing these appeals.

> In our view, it is apparent that the entire approach of the High court is illegal and erroneous. From the reasons recorded by the high Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial..."

Judged in the light of the settled position of law as reiterated in the decisions noted above, the order under challenge in the present case does not stand the scrutiny. The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the question whether the charge under Section 304/34 l.P.C. framed against the accused respondents 1 and 2 was likely to succeed or not. This question was to be considered by the Trial Judge after recording the entire evidence in the case. It was not for the High Court to pre-judge the case at the stage when only a few witnesses (doctors) had been examined by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the case make it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Section 482 Cr. P. C. is warranted in the interest of justice. On consideration of the matter we have no hesitation to hold that the order under challenge is vitiated on account of erroneous approach of the High Court and it is clearly unsustainable.

Accordingly, the appeal is allowed. The order under challenge is set aside. The trial Court is directed to proceed with hearing of the case in accordance with law.