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CHANDI PULIYA

v.

THE STATE OF WEST BENGAL
(Criminal Appeal No. 2249 of 2022)

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DECEMBER 12, 2022

[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

- Code of Criminal Procedure, 1973: ss.227, 300, 228 – Discharge application – Appellant was acquitted by the Sessions Court for the offences under ss. 148, 149, 448, 364 and 506 IPC – Second FIR filed against appellant alleging inter alia that he and other co-accused had caused the death of the father of the first informant, the same person that they had alleged to have kidnapped and were granted acquittal – Appellant approached the High Court for quashing the criminal proceedings arising out of the second FIR – Dismissing the petition, High Court granted appellant liberty to take up all points of law at the time of framing of charge – Special leave petition preferred by the appellant was dismissed by this Court – Accordingly, appellant filed discharge application u/s. 227 r/w 300(1) Cr.P.C before trial court – Trial court dismissed the discharge application by observing that such an objection can be raised at the stage of framing charge and not at the stage of discharge – High Court dismissed the revision application filed by the appellant – Held: The stage of discharge u/s. 227 is a stage prior to framing of the charge (u/s. 228 Cr.P.C.) and it is at that stage alone that the court can consider the application u/s. 300 – It is after the court rejects the discharge application, it would proceed to framing of charge u/s. 228 – High Court's order is quashed – Matter remitted to trial court to consider discharge application.*

Remitting the matter to trial court, the Court

- G HELD: On a fair reading of Section 227 Cr.P.C, 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, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. As**

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per Section 228 Cr.P.C. only thereafter and if, after such consideration and hearing, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the trial Court shall frame the charge. Therefore, the stage of discharge under Section 227 Cr.P.C. is a stage prior to framing of the charge (under Section 228 Cr.P.C.) and it is at that stage alone that the court can consider the application under Section 300 Cr.P.C. Once the court rejects the discharge application, it would proceed to framing of charge under Section 228 Cr.P.C. [Para 7][571-C-E]

Ratilal Bhanji Mithani v. State of Maharashtra [1979] C
1 SCR 993 – referred to.

Case Law Reference

[1979] 1 SCR 993 referred to Para 4.1

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2249 of 2022. D

From the Judgment and Order dated 27.06.2022 of the High Court of Calcutta at Kolkata, West Bengal in CRR No.1328 of 2022.

Siddhartha Dave, Sr. Adv., Ms. Suruchi Suri, Ms. Srilina Roy, Prastut Dalvi, Chanchal Kumar Ganguli, Advs. for the Appellant. E

Sunil Fernandes, Ms. Astha Sharma, Divyansh Tiwari, Ravinder Singh, Ms. Raveesha Gupta, Ms. Mantika Haryani, Sanjeev Kaushik, Shreyas Awasthi, Devvrat Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J. F

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 27.06.2022 passed by the High Court at Calcutta in Revision Application No. 1328/2022, by which the High Court has dismissed the said revision application preferred by the appellant – accused and has confirmed the order passed by the learned Special Court, West Bengal (MP & MLA case), Bidharnagar dated 4.3.2022 passed in Special Case No. 120 of 2018, the appellant-accused has preferred the present appeal.

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- A 3. The facts leading to the present appeal in nutshell are as under:
- That the appellant herein was tried earlier for the offences punishable under Sections 148, 149, 448, 364 & 506 of the Indian Penal Code (IPC) in FIR No. 61/2002 dated 26.09.2002 of Keshpur Police Station. The appellant came to be acquitted by the learned Sessions Court *vide* judgment and order of acquittal dated 21.05.2010. That thereafter on 6.6.2011, after a period of nine years from the date of registration of the first FIR and one year from the date of acquittal, a second FIR came to be lodged against the appellant and others alleging *inter alia* that the appellant and other co-accused had caused the death of Ajay Acharya, i.e., father of the first informant, the same person that they had alleged to have kidnapped and were acquitted of.
- D 3.1 It appears that the second FIR was registered on the basis of the discovery of the skeleton and identification of the clothes and teeth of the skeleton, by the son of the deceased, 11 years after the alleged incident.
- D 3.2 The appellant-accused approached the High Court seeking quashing of the entire criminal proceedings emanating out of the second FIR *vide* order dated 29.04.2016. While dismissing the said proceedings, the High Court granted liberty to take up all the points of law at the time of framing of charge. While dismissing the special leave petitions, this Court granted liberty to the accused – appellant to avail the remedy at the stage of framing of the charge. Accordingly, a discharge application under Section 227 r/w Section 300(1) Cr.P.C. was filed by the appellant before the learned trial Court. The learned trial Court dismissed the said application by observing that such an objection can be raised at the stage of framing of charge and not discharge. The order passed by the learned trial Court has been confirmed by the High Court, by the impugned judgment and order. Hence, the present appeal.
- G 4. It is vehemently submitted by Shri Siddhartha Dave, learned senior counsel appearing on behalf of the appellant – accused that the courts below have erred in not considering the application for discharge filed by the appellant at the stage of discharge. It is submitted that the stage of discharge under Section 227 Cr.P.C. is a stage prior to charge and it is at this stage alone that the court can consider an application under Section 300 Cr.P.C. It is submitted that once the court rejects the discharge application, it would proceed to framing of charge under H

Section 228 Cr.P.C. and the only question before it would be as to the nature of the offence, and not that the appellant has not committed an offence, or that he cannot be tried on account of the bar under Section 300 Cr.P.C.

4.1 It is further submitted that the courts below have failed to appreciate that the present proceedings arise from the discharge proceedings and that the stage of discharge under Section 227 Cr.P.C. precedes the stage of framing of charge under Section 228 Cr.P.C. It is submitted that as observed and held by this Court in the case of *Ratilal Bhanji Mithani v. State of Maharashtra, (1979) 2 SCC 179*, once the charges are framed, the accused is disentitled from praying for discharge.

4.2 It is further submitted that it is true that the judgment of acquittal dated 21.05.2010 has been challenged by the State before the High Court, but the same has not been admitted by the High Court.

4.3 It is further submitted that the appellant has already been acquitted of the offence of kidnapping. On the basis of the same facts, the appellant is now being sought to be prosecuted for the offence under Section 302 IPC, without invoking Section 346 IPC, only to circumvent the bar under Section 300(1) Cr.P.C. It is submitted that the bar under Section 300(1) Cr.P.C. also applies to prosecution for same facts for any other offence for which a different charge from the one made against the accused might have been made under sub-section (1) of Section 221, or for which the accused might have been convicted under sub-section (2) thereof.

4.4 It is further submitted that in the case of *State v. Nalini, (1999) 5 SCC 253*, this Court while discussing the principle of *autrefois convict and autrefois acquit* held that Section 300 Cr.P.C. has widened the protective wings by debarring a second trial against the same accused on the same facts even for a different offence.

4.5 Making above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeal and discharge the appellant from the subsequent second FIR No. 36/2011, in terms of Section 300(1) Cr.P.C.

5. While opposing the present appeal, Shri Sunil Fernandes, learned counsel appearing on behalf of the respondent – State has vehemently submitted that as such the order of acquittal in relation to first FIR is the

- A subject matter of appeal before the High Court. It is submitted that even otherwise in the first FIR the appellant and other co-accused were tried for the offences under Sections 148, 149, 448, 364 & 506 IPC in FIR No. 61/2002. It is submitted that at the relevant time, the dead body of the deceased was not found. It is submitted that the appellant and other co-accused were tried and as such acquitted for the offence of kidnapping etc. and not for the offence under Section 302 IPC, as now to be tried pursuant to the subsequent FIR, which was lodged after the discovery of the skeleton and identification of the clothes and teeth of the skeleton. It is submitted that therefore, as such, Section 300 Cr.P.C. shall not be attracted at all.
- B etc. and not for the offence under Section 302 IPC, as now to be tried pursuant to the subsequent FIR, which was lodged after the discovery of the skeleton and identification of the clothes and teeth of the skeleton. It is submitted that therefore, as such, Section 300 Cr.P.C. shall not be attracted at all.
- C 5.1 It is further submitted that earlier the application submitted by the appellant under Section 482 Cr.P.C. to quash the subsequent criminal proceedings emanating out of the second FIR came to be dismissed by the High Court and the appellant was relegated to avail the remedy at the stage of framing of the charge. It is submitted that the very plea/
- D defence under Section 300 Cr.P.C. was pressed into service but the High Court refused to quash the criminal proceedings arising of the subsequent second FIR. It is submitted that thereafter when the accused had filed the discharge application, the learned trial Court rejected the said application by observing that the appellant-accused is entitled to raise all the points as mentioned in the petition under Section 300(1) Cr.P.C. at the time of framing of charge. It is submitted that as such the discharge application under Section 227 Cr.P.C. is yet to be considered by the learned trial Court.
- E 5.2 Making the above submissions, it is prayed to dismiss the present appeal.
- F 6. We have heard learned counsel for the respective parties at length.
- G At the outset, it is required to be noted that pursuant to the liberty reserved by the High Court while dismissing the petition under Section 482 Cr.P.C., the appellant accused filed an application for discharge under Section 227 r/w Section 300(1) Cr.P.C. Out of the said application, application under Section 300(1) Cr.P.C. has been dismissed by the learned trial Court by observing that the appellant-accused shall be entitled to raise all the points including the applicability of Section 300(1) Cr.P.C. at the time of hearing on framing of charge. The application under Section 227 Cr.P.C. filed by the accused is yet to be considered by the learned

trial Court. At this stage, Section 227 Cr.P.C. is required to be referred A to, which reads as under:

“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.”

7. On a fair reading of Section 227 Cr.P.C, 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 doing so. As per Section 228 Cr.P.C. only thereafter and if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the trial Court shall frame the charge. Therefore, as rightly submitted by Shri Siddhartha Dave, learned senior counsel appearing on behalf of the appellant-accused that the stage of discharge under Section 227 Cr.P.C. is a stage prior to framing of the charge (under Section 228 Cr.P.C.) and it is at that stage alone that the court can consider the application under Section 300 Cr.P.C. Once the court rejects the discharge application, it would proceed to framing of charge under Section 228 Cr.P.C.

8. Under the circumstances, the learned trial Court has erred in not considering the application under Section 300(1) Cr.P.C. at the time of framing of charge and/or prior to framing of the charge. As observed hereinabove, the trial Court had observed that the appellant-accused shall be entitled to raise all points as mentioned in his application under Section 300(1) Cr.P.C. at the time of hearing on framing of charge. However, as observed hereinabove, such exercise was required to be done at a stage prior to framing of charge and if ultimately the court comes to the conclusion overruling the objection of Section 300(1) Cr.P.C. and on facts satisfies then it may frame the charge as provided under Section 228 Cr.P.C. The High Court has not at all appreciated and/or considered the aforesaid aspect. Therefore, the matter is required to be remanded to the learned trial Court to consider the plea of the accused on applicability of Section 300(1) Cr.P.C. at the stage of discharge under

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- A Section 227 Cr.P.C., which is a stage prior to framing of the charge under Section 228 Cr.P.C.

9. Now so far as the prayer on behalf of the appellant to discharge the accused in view of the bar under Section 300(1) Cr.P.C. is concerned, the same may not be granted at this stage in view of the earlier order

- B passed by the High Court dismissing the petition under Section 482 Cr.P.C. to quash the criminal proceedings which were sought to be quashed on the very ground and the accused was relegated to avail remedy at the time of discharge. It is to be noted that the earlier order passed by the High Court had attained finality and even thereafter the appellant-accused C had filed the discharge application under Section 227 r/w Section 300(1) Cr.P.C.

10. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The matter is remitted to the learned trial Court to consider the application under Section 300(1) Cr.P.C. filed by the

- D appellant – accused along with the application for discharge under Section 227 Cr.P.C., which is a stage prior to framing of the charge and thereafter to pass appropriate orders on framing of the charge under Section 228 Cr.P.C., in case the objection/defence of the accused under Section 300(1) is overruled and the trial Court is satisfied that there is sufficient grounds

- E for framing of charge against the accused. The aforesaid exercise shall be completed within a period of six weeks from the date of receipt of the present order. Needless to say, that the learned trial Court shall decide the said application in accordance with law and on its own merits, without being influenced by any of the observations made by the High Court in the impugned order or by this Court in the present order.

- F 11. The present appeal stands disposed of with the aforesaid observations.