Kanti Bhadra Shah And Anr vs State Of West Bengal on 5 January, 2000

Equivalent citations: AIR 2000 SUPREME COURT 522, 2000 (1) SCC 722, 2000 AIR SCW 52, 2000 (2) SRJ 112, 2000 CRILR(SC&MP) 173, 2000 CRILR(SC MAH GUJ) 173, 2000 (1) SCALE 19, 2000 (1) LRI 42, 2000 CALCRILR 151, 2000 CRIAPPR(SC) 109, 2000 ALL MR(CRI) 1013, 2000 SCC(CRI) 303, (2000) 1 JT 13 (SC), 1999 CHANDLR(CIV&CRI) 685, (2000) 1 RECCRIR 435, (2000) 18 OCR 477, (2000) 1 SCALE 19, (2000) 3 PAT LJR 150, (2000) SC CR R 375, (2000) 1 EASTCRIC 240, (2000) 1 KER LT 795, (2000) MAD LJ(CRI) 243, (2000) 2 MAHLR 534, (2000) 1 PAT LJR 103, (2000) 1 RAJ LW 66, (2000) 1 RECCRIR 407, (2000) 3 SCJ 77, (2000) 1 CURCRIR 72, (2000) 1 SUPREME 6, (2000) 27 ALLCRIR 176, (2000) 40 ALLCRIC 441, (2000) 1 BLJ 503, (2000) 1 CAL HN 60, (2000) 3 CALLT 12, (2000) 1 CHANDCRIC 135, (2000) 1 ALLCRILR 22, (2000) 1 CRIMES 96, 2000 (1) ANDHLT(CRI) 121 SC, (2000) 1 ANDHLT(CRI) 121

Author: D.P. Mohapatra

Bench: D.P. Mohapatra

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           CASE NO.:
Appeal (crl.)  5 of 2000

PETITIONER:
KANTI BHADRA SHAH AND ANR.

RESPONDENT:
STATE OF WEST BENGAL

DATE OF JUDGMENT: 05/01/2000

BENCH:
K,T. THOMAS & D.P. MOHAPATRA

JUDGMENT:
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JUDGMENT 2000 (1) SCR 27 The Judgment of the Court was delivered by THOMAS, J.

Leave granted.

Though the appellants succeeded in the High Court their grievance still persists as they are not out of woods now. Appellants approached the High Court to quash the charge framed against them by a Metropolitan Magistrate. The High Court quashed it, but directed the Magistrate to consider again

whether the same charges could be framed against appel-lants afresh.

We heard learned counsel for the appellants, but we did not find it necessary to hear the sole respondent (State of West Bengal) as this appeal can be disposed of even without the aid of such arguments.

On the basis of a complaint lodged with the Police Station, Burra Bazar (Calcutta) an investigation was conducted by the police and the charge sheet was filed before the Metropolitan Magistrate, Calcutta, against appellants and some other persons for offences under Sections 454, 380 and 120B of the Indian penal Code, The Magistrate issued process to the accused and after hearing them a charge was framed against them for the said offences. While framing the charge the Magistrate had as per order dated 63.1999, dismissed the petition filed by the accused for dis-charging them. Appellants thereafter moved the High Court for quashing the charge.

The Metropolitan Magistrate who framed the charge opted to write a short order presumably for dismissing the petition Filed by the appellants for discharging them. The Magistrate stated in the order thus ;

The Investigating Officer has submitted charge sheet against the four accused persons after completion of the investigation under Sections 454, 380, 120B I.P.C. Hence prima facie the case is established against the accused persons under those Sections. There is nothing on behalf of the accused persons save and except a petition."

A learned Single Judge of the High Court who set aside the aforesaid order remarked that it was not discernible from the order of the Magistrate that he had taken into consideration the charge-sheet and the other papers submitted therewith for satisfying himself as to whether there is a prima fade case against the accused persons for the aforesaid offences. This is what the learned Single Judge observed :

> "It is true that the language in which the impugned order is passed is not happy one. That I am not sure whether the learned Magistrate applied his mind to the facts and circumstances of the case and took the pain to satisfy himself from the materials dis-closed by the charge sheet and other papers submitted therewith as to whether a prima facie case was made out against the accused persons for framing charges under the aforesaid penal provisions."

After observing thus learned Single Judge expressed his helplessness in supporting the order framing charges against the appellants. The Metropolitan Magistrate was thereupon directed to peruse the charge-sheet along with other papers submitted to him and satisfy himself again as to the existence of a prima fade case against the accused. The further directions given by the learned Single Judge reads thus :

> "If he decides to frame charge upon such satisfaction based on perusal of the charge-sheet and other papers submitted therewith, the learned Magistrate must

> record the fact of such perusal and his satisfaction, only then he shall proceed to frame the charge. If on the other hand upon perusal of the aforesaid documents the learned Magistrate finds that the papers do not disclose my prima fade case against the petitioner for framing charges, it shall be open to him to discharge the petitioners from the case."

We wish to point out that if the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial judge has formed the opinion, upon consideration of the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. Chapter XIX deals with provisions for trial of warrant cases instituted on police report. Section 239 reads thus :

> "239. When accused shall be discharged. - (1) If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate con-siders the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing." The said Section shows that the Magistrate is obliged to record his reasons if he decides to discharge the accused. The next section (Section
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> 240) reads thus :
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> "240, Framing of charge - (1) If, upon such consideration, examina-tion, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.
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> (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.

Even in cases instituted otherwise than on 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 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 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 other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stage 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 other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

In the present case as the Metropolitan Magistrate has chosen to frame the charge, the High Court, when moved by the accused for quash-ment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not. If the High Court decides to quash the charge it is open to the High Court to record the reasons thereof. The present order of the High Court is one of setting aside the charge without stating any reason. But the direction to the Magistrate to consider the materials once again and then to frame a charge for the same offence (if the Magistrate reaches the opinion that there is ground for presuming the commission of offence) is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial court. Be that as it may, the State has not challenged the order of the High Court. Hence we are not in a position to set aside the impugned order of the High Court. We leave the order as such by making the aforestated observations. We leave it to the Metropolitan Magistrate to exercise his functions under Section 239 or 240 of the Code as he deems Fa in the light of the observations made above.

The appeal is accordingly dismissed.