Dinesh Tiwari vs State Of U.P. & Anr on 7 July, 2014

Equivalent citations: AIR 2014 SUPREME COURT 3502, 2014 (13) SCC 137, 2014 AIR SCW 4665, 2014 (6) ALL LJ 79, 2014 (8) SCALE 427, 2014 CRILR(SC MAH GUJ) 787, (2014) 141 ALLINDCAS 150 (SC), (2015) 1 RAJ LW 26, (2014) 4 CRIMES 154, (2014) 4 CRIMES 477, (2014) 3 CRILR(RAJ) 787, (2014) 107 ALL LR 2, (2014) 2 UC 1468, 2014 (141) ALLINDCAS 150, (2014) 59 OCR 762, 2014 CRILR(SC&MP) 787, (2014) 4 CRIMES 439, (2014) 3 PAT LJR 490, (2014) 4 RECCRIR 36, (2014) 3 CURCRIR 413, (2014) 8 SCALE 427, (2014) 3 JLJR 390, (2014) 3 BOMCR(CRI) 327, (2014) 86 ALLCRIC 872, (2014) 3 ALLCRILR 657

Bench: V. Gopala Gowda, Sudhansu Jyoti Mukhopadhaya

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1365 OF 2014
(Arising out of SLP (CRL.) No.3051/2008)

DINESH TIWARI … APPELLANT

Versus

STATE OF UTTAR PRADESH & ANR. … RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. This appeal is directed against the judgment and order dated 11th December, 2007 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No.26878 of 2007. By the impugned judgment, the High Court dismissed the application filed by the appellant- accused u/s 482 Cr.P.C for quashing the order dated 1st September, 2007 passed by the Additional Sessions Judge/F.T.C No.3, Basti in Sessions Trial No.207/07 in State v. Ram Vijay Yadav etc. By the said order, the Additional Sessions Judge framed the charge against the appellant-accused for the offence u/s 302, 323, 504 and 506 IPC.

3. The factual matrix of the case is as under:

> One Mahender Prasad Tiwari complainant lodged an FIR against the present appellant-Dinesh Tiwari, Sadhu Saran and Ram Vijay Yadav for the offence u/s 302, 323, 504 and 506 IPC in Police Station Mahuli, District Sant Kabir Nagar. It was registered as Crime No.84/2006. It was alleged that the appellant along with Sadhu Saran committed murder of Arvind Kumar Tiwari son of the complainant. Reasons for enmity and detail event of murder were mentioned in the FIR.
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> Police started the investigation but subsequently, on the order of the Government the investigation was transferred to CBCID. CBCID submitted charge sheet against Sadhu Saran Yadav co-accused for the offence u/s 302, 323, 504 and 506 IPC. It was mentioned in the charge sheet that investigation shall continue against rest of the accused persons. The CJM took cognizance of the offence vide order dated 8th May, 2006. The case was committed to the Court of Sessions and was registered as S.T. No. 149/2006 titled State v. Sadhu Saran Yadav. Thereafter, CBCID submitted the charge sheet against Ram Vijay Yadav for the offence u/s 302, 323, 504 and 506 IPC and as against the appellant for the offence u/s 323, 504 and 506 IPC. No charge sheet was submitted against the appellant for the offence u/s 302 IPC. The cognizance was taken by CJM on charge sheet no.5A of 2006 on 23rd January, 2007. Bail was granted to the appellant for the offence u/s 323, 504 and 506 IPC. The case was committed to the Court of Sessions by the CJM after taking cognizance and the Sessions Court framed charge against the appellant for the offence u/s 302 IPC, apart from Section 323, 504 and 506 IPC.

4. The aforesaid order was challenged by the appellant by filing criminal miscellaneous application u/s 482 Cr.P.C. for quashing the order framing the charge u/s 302 IPC. The High Court by impugned judgment and order dated 11th December, 2007 dismissed the same.

5. Counsel for the appellant has made the following submissions:

> (a) Appellant-accused was not given an opportunity of being heard before framing of the charge u/s 302 IPC.
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> (b) Neither any charge sheet was submitted by the investigating agency against the appellant for the offence u/s 302 IPC nor any cognizance was taken by the CJM against him for the said offence. But Sessions Judge after committal framed the charge u/s 302 IPC which was not permissible.

6. Per contra, according to learned counsel for the respondents, there is ample material on record to show that the appellant along with Sadhu Saran committed murder of Arvind Kumar Tiwari son of the complainant and hence the Trial Court rightly framed the charge u/s 302 IPC.

7. Chapter XVIII of Cr.P.C. deals with "Trial before a Court of Session". As per Section 226, when the accused person is brought before the Court in pursuance of a commitment of the case u/s 209, the prosecutor is required to open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove his guilt of the accused.

8. Section 227 deals with Discharge and it reads as follows:

> "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." As per the aforesaid provision, upon consideration of the records of the case and the documents submitted before him and after hearing the submissions of the party accused and the prosecution if the Judge is of the opinion that no sufficient ground is made out to proceed against the accused, he is required to discharge the accused and record his reasons for doing so.

9. Section 228 relates to framing of charge as follows:

> "228.Framing of charge.-(1), If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-
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> is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate (or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;
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> is exclusively triable by the Court, he shall frame in writing a charge against the accused.
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> (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried." From sub Section (1) of Section 228, it is clear that after such consideration and hearing, as given under Section 227, if Judge forms an opinion that there is a ground for presuming that the accused has committed an offence, Judge may frame the charge(s).

From Section 228 it is clear that no separate hearing is required to be given for framing the charge if the accused is not discharged upon consideration of the record of the case and documents and after hearing the submissions under Section 227.

10. Relative scope of Sections 227 and 228 Cr.P.C. was noticed and considered by this Court in Amit Kapoor v. Ramesh Chander and another, (2012) 9 SCC 460. This Court held as follows:

> "17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code." "19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh: (SCC pp. 41- 42, para 4) "4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to [pic]consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section
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> 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. 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 the stage of deciding the matter under Section 227 or Section 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 evidence, if any, cannot show that the accused committed the offence, then 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 Section 227 or Section 228, then in such a [pic]situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

11. In this case, it is not alleged that the Sessions Judge has not followed Sections 226 and 227 Cr.P.C before framing the charge. Further, it is not the case of the appellant that the court has not given him hearing at the stage of discharge u/s 227 Cr.P.C. For framing of charge u/s 228, the judge is not required to record detail reasons as to why such charge is framed. On perusal of record and hearing the parties at the stage of discharge u/s 227 Cr.P.C. if the Judge is of opinion that there is ground for presuming that the accused has committed an offence, he is competent to frame charge for such offence even if not mentioned in the charge sheet. We find no merit in this appeal. The appeal is accordingly dismissed.

……J. (SUDHANSU JYOTI MUKHOPADHAYA)
.....J. (V. GOPALA GOWDA) NEW DELHI, JULY 07, 2014.