

**Supreme Court - Daily Orders**

**State By The Inspector Of Police ... vs S. Selvi And Anr. Etc. on 15 December, 2017**

NONREPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2190 OF 2017

(Arising from SLP(Crl.) No.2375/2016)

State by the Inspector of Police,  
..Appellant  
Chennai

versus

S.Selvi and another  
..Respondents

WITH CRIMINAL APPEAL NO.2191 OF 2017 (Arising from SLP(Crl.) No.2455/2016)  
J U D G M E N T MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The judgment dated 12.01.2016 passed by the High Court of Judicature at Madras in Crl.R.C. No. 1181 of 2015 and M.P. No. 01 of 2015 is called in question in these appeals. By the impugned judgment, the High Court has discharged Smt. S. Selvi accused no.2 Signature Not Verified Digitally signed by (respondent no.1 herein) from CC No. 229 of 2013 for the offence SARITA PUROHIT Date: 2017.12.16 12:37:11 IST Reason:

punishable under section 506(i) of the Indian Penal Code.

3. Respondent no.2 herein/defacto complainant lodged a complaint alleging that he entered into an agreement for sale in connection with purchase of property situated in survey no. 171/2A, Thalambur village, Chengalpet Taluk, Kancheepuram District, Chennai to the extent of 2.94 acres for a total sale consideration of Rs.5,14,50,000/belonging to Smt. S.Selvi on 5.7.2007, with her power of attorney Mr. Jothimani-accused no.1 who is the soninlaw of Smt. S.Selvi. The defacto complainant is stated to have paid a sum of Rs.2,00,00,000/ by way of cheque dated 05.07.2007 towards advance; Rs.1,00,00,000/ by way of cheque on 21.07.2007 and Rs.50,00,000/ on 06.08.2007. The balance of sale consideration, though were allegedly tried to be paid by the defacto complainant repeatedly, both the accused refused to receive the same and to carry out the terms of the agreement. During the year 2011, accused no.1 issued three cheques for repaying the amount received from the defacto complainant and all of them were returned 'unpaid' by the bank. Hence for the purposes of recovery of amount, the defacto complainant visited the house of respondent no.1 on 20.09.2011 and at that time he was threatened with dire consequences, beaten and pushed out of the house of accused/respondent no.1 by her and

accused no.1. A complaint came to be lodged on 21.09.2011 before the Commissioner of Police, Egmore, Chennai. Since no action was taken by the Commissioner of Police, the defacto complainant preferred Criminal O.P.No. 17945/2012 before the High Court of Judicature at Madras under Section 482 of the Code of Criminal Procedure. On being directed by the High Court vide its order dated 07.09.2012, the complaint came to be registered by Central Crime Branch, TeamIII, Chennai as C.C.B. Crime No. 484 of 2012 on 18.09.2012. The police after investigation laid a final report before the Judicial Magistrate, Ist Class, Poonamallee on 01.10.2013, which came to be registered as CC No. 229/2013.

4. Smt. S.Selvi accused no.2 argued for discharge before the trial Court. Such arguments were turned down by the trial Court and the application filed by her under Section 239 of the Code of Criminal Procedure praying for discharge was dismissed on 05.11.2015. As against such order, Smt. S.Selvi approached the High Court of Judicature at Madras in Crl.R.C. No. 1181 of 2015 and M.P. No. 1 of 2015. The High Court set aside the order of the trial Court and discharged Smt. S.Selvi. The order of the High Court is impugned in these appeals.

5. The appellant's counsel taking us to the complaint, material

on record and the order of the High Court contends that the High Court is not justified in discharging the accused by evaluating in detail the statements of the witnesses recorded during the course of investigation. He contended that it is not open for the High Court to assess the evidence as is generally done by the trial Court at the time of final disposal of criminal case. According to him, the High Court should have affirmed the judgment of the trial Court since the material on record is sufficient to frame charge against the accused.

6. Per contra, it is contended by the learned counsel for respondent no.1 that the High Court is justified in discharging the accused; if two views are equally possible and if the Judge is satisfied that the evidence produced before him raises some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. According to him, the material on record may disclose some suspicion but not grave suspicion against the accused respondent no.1. The Court under Section 239 of the Code has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. It is further contended that the amount, if any, paid by the complainant has been paid back to the defacto complainant, that too more than the amount that was allegedly paid

by the defacto complainant; lodging of the complaint is a political vendetta that lacks bonafides and merits; respondent no.1 is distinctly charged under Section 506(i) of IPC and not charged with other offences i.e., Sections 406 and 420 of IPC with which the first accused was charged; no case is made out against respondent no.1 for the offence under Section 506(i) of IPC. The alleged date and time of committing offence is 20.09.2011 at 11.30 a.m. as per the complaint, which is contrary to the material found in the charge sheet. The alleged time of occurrence, i.e., at 5.30 p.m. or 11.30 a.m. on 20.09.2011, as the case may be, will not make much difference inasmuch as the first respondent travelled from Chennai to Calcutta by Jet Airways flight that departed on 7.50 a.m., and returned back to Chennai late in the night by Indigo flight and hence it is not possible for respondent no.1 to have been present on the date of alleged occurrence. He further drew the attention of the Court to certain other discrepancies found in the averments made in the complaint and the material gathered by the police during the course of investigation. He relied upon the judgments in the cases of [State of Haryana vs. Bhajan Lal](#) (1992) SCC Supp. 1; [Union of India vs. Prafulla Kumar Samal](#), (1979) 3 SCC 4; [State of Tamil Nadu vs. N. Suresh Rajan](#), (2014) 11 SCC 709.

7. It is well settled by this Court in catena of judgments including the cases of [Union of India v. Prafulla Samal](#), (1979) 3 SCC 4; [Dilawar Babu vs. State of Maharashtra](#) (2002) 2 SCC 135; [Sajjan Kumar vs. CBI](#) (2010) 9 SCC 368; [State v. A.Arun Kumar](#) (2015) 2 SCC 417; [Sonu Gupta vs. Deepak Gupta](#) (2015) 3 SCC 424; [State of Orissa v. Debendra Nath Padhi](#) (2003) 2 SCC 711; [Niranjan Singh Karam Singh Punjabi etc. vs. Jitendra Bhimraj Bijjayya](#) (1990) 4 SCC 76 and [Superintendent & Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunja](#) (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 Cr. P.C. pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a Post Office or a mouth

piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial. In the case of [Sajjan Kumar vs. CBI](#) (2010) 9 SCC 368, this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles:

- (i) The Judge while considering the question of framing the charges under Section 227 of the [Cr.P.C.](#) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
- ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.
- iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
- iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed

offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

This Court in the cases of [State vs. A. Arun Kumar](#) (2015) 2 SCC 417, [Sonu Gupta vs. Deepak Gupta](#) (2015) 3 SCC 424, [State of Orissa vs.](#)

[Debendra Nath Padhi](#) (2003) 2 SCC 711 and [State of Tamil Nadu vs. Suresh Rajan](#) (2014) 11 SCC 709 has reiterated almost the afore mentioned principles.

However, In the case of [State of Haryana Vs. Bhajan Lal](#), 1992 (Sup 1) SCC 335 relied upon by the counsel for respondent no.1 is not applicable to the facts of the case inasmuch as the said matter arose out of the judgment of the High Court quashing the entire Criminal proceedings inclusive of the registration of First

Information Report. The said Matter was not concerned with the discharge of the accused.

8. In the matter on hand, the main allegation against the first respondent-accused no.2 as found in the charge sheet is that while the complainant along with the relevant documents proceeded to the residence of accused nos. 1 and 2 at Door No. 28, West Gopalapuram, Chennai 86, to get back his money due to him on 20.09.2011, at about 17:30 hours, accused nos. 1 and 2 threatened the complainant, snatched away the documents from him, denied him permission to enter into their house and threatened him with dire consequences if he entered into their house. It is relevant to note that in the complaint dated 21.09.2011 it is stated that when the complainant went to West Gopalapuram and met accused for an enquiry about payment, the accused got furious, beat him and with the help of four henchmen pushed him out of their house. On the basis of these discrepancies, contention of the learned counsel for the accused that the case as made out by the prosecution cannot be believed inasmuch as the material on record is not consistent. It may give rise to some suspicion but not grave suspicion, though appears to be attractive, but is not acceptable in view of entire material on record. On going through the judgment of the High Court, we find that the High Court has virtually

appreciated the entire material on record as if the High Court is trying a criminal case. It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the Judge has got power to sift and weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge. The test to determine a prima facie case would naturally depend upon the facts of each case. At this preliminary stage, the High Court was not justified in concluding that the accused is entitled for discharge merely on the ground of discrepancy in the timings of the incident. The question as to whether respondent no.1 was present on the place of incident or not during the relevant point of time or she had been in Calcutta as sought to be argued before this Court is a matter of proof. Such fact needs to be gone into by the trial Court after recording the evidence.

If on the basis of the material on record, the Court would form prima facie opinion that the accused might have committed offence, it can frame charge, though for conviction it is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the probative value of the material on record has to be gone into and the Court is not expected to

go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging therefrom taken at the face value discloses the existence of all the ingredients constituting the alleged offence. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that material brought on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offence.

9. As mentioned supra, the High Court has discharged the accused no2/respondent no.1 only on the ground that there is a discrepancy in the time of the occurrence. In the complaint it is mentioned as 11:30 a.m. whereas in the complainant's statement recorded under Section 161(3) of the Cr.P.C., it is mentioned as 5:30 p.m. In our considered opinion, only on the basis of such discrepancy, the High Court should not have discharged the accused. The High Court should have taken into consideration the other material on record to find out as to whether prima facie case is made out against the accused or not for framing of charge. Be that as it

may, we find that the material on record at this stage is sufficient to frame charge for the offence under Section 506(i) of IPC against respondent no.1/accused no.2, inasmuch as the averments made in the complaint and the investigating report prima facie disclose that the complainant was threatened with dire consequences. Hence, in our view, the High Court was not justified in discharging the accused.

10. Accordingly, these appeals are allowed, the judgment of the High Court discharging the accused is set aside. The trial Court is directed to proceed with the matter in accordance with law against the accused.

.....J.

[ARUN MISHRA]

NEW DELHI;

..... J .

DECEMBER 15, 2017.

[MOHAN M. SHANTANAGOUDAR

ITEM NO.1501

COURT NO.10

SECTION

II-C

(For Judgment)

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CrI.A.No.2190/2017 @

Petition(s) for Special Leave to Appeal (CrI.) No(s).2375/2016 (Arising out of impugned final judgment and order dated 12-01-2016 in CRLRC No.1181/2015 passed by the High Court Of Judicature At Madras) STATE BY THE INSPECTOR OF POLICE, CHENNAI Petitioner(s) VERSUS S. SELVI AND ANR. Respondent(s) WITH CrI.A.2191/2017 @ SLP(CrI) No.2455/2016 (II-C) Date : 15-12-2017 These matters were called on for pronouncement of judgment today.

For Petitioner(s) Mr. M. Yogesh Kanna, AOR  
Mr. K. parameshwar, AOR

For Respondent(s) Mr. P.R. Kovilan Poongkuntran, Adv.  
Mr. V. Vasudevan, Adv.  
Ms. Aswathi M.K., Adv.  
For Mr. Kaushal Yadav, AOR

Hon'ble Mr. Justice Mohan M. Shantanagoudar pronounced the Non-Reportable judgment of the Bench comprising Hon'ble Mr. Justice Arun Mishra and His Lordship.

Leave granted.

The appeals are allowed in terms of the signed Non- Reportable judgment.

Pending application, if any, stands disposed of.