SUPREME COURT OF INDIA

Asim Shariff

Vs.

National Investigation Agency

Crl.A.No.949 of 2019

(A.M.Khanwilkar and Ajay Rastogi,JJ.,)

01.07.2019

JUDGMENT

Ajay Rastogi,J.,

SLP(Crl.)No.1253 of 2019

1. Leave granted.

2. The present appeal has been preferred by the accused appellant against whom a criminal case bearing no. RC 04/16- NIA-HYD came to be registered along with four other accused ersons for the offences punishable under Sections 120-B, 109, 50, 153A, 302, 201 read with Section 34 of IPC; Sections 3 and 27 of the Arms Act and Sections 15,16,17,18 & 20 of the Unlawful Activities(Prevention) Act, 1967(hereinafter being referred to as "UAP Act").

3. After completion of the investigation, final report was submitted before the trial Court against the accused persons including appellant. The appellant claims that there was no material for registering the criminal case neither investigating nor submitting the final report against him. At this stage, the appellant filed application under Section 227 of Code of Criminal Procedure, 1973(hereinafter being referred to as "CrPC") seeking his discharge from the case for the aforesaid offences. The application was dismissed by the trial Judge/Special Judge who ordered for framing of charges against him for the aforesaid offences under Order dated 2nd January, 2018 came to be challenged by the appellant in a writ petition filed under Article 226 and 227 of Constitution of India read with Section 482 CrPC which was dismissed by a lucid impugned judgment dated 22 nd November, 2018 which is a subject matter of challenge in the instant appeal.

4. The background facts giving rise to this appeal which needs to be noted are that a criminal case came to be registered as Crime No. 124/2016 on 16th October, 2016 for the offences punishable under Section 302 read with Section 34 IPC by Commercial Street Police after a complaint was filed by one Jayaram(CW-1), who stated that on 16th October, 2016 at around 12.40 p.m. when he along with his friends namely Rudresh, Harikrishna

and Kumar assembled near Srinivas Medical Stores, Shivajinagar, one person(accused) being the pillion rider of the motorcycle hacked Rudresh with a sharp edged and lethal machete on the right side of his neck and fled. Rudresh was taken to a hospital wherein he was declared brought dead.

5. Initially, four accused persons (Accused nos. 1 to 4) were arrested on 27th October, 2016. Accused no. 5(appellant herein) was arrested on 2nd November, 2016. Subsequently, the task of investigation was entrusted to National Investigating Agency (NIA) by the Union of India, Ministry of Home Affairs, New Delhi on 7th December, 2016. NIA registered FIR in RC No. 24/2016 against all five accused persons including the appellant. After investigation, the charge sheet was submitted against all five accused persons on 21st April, 2017 which stated that accused nos. 1 to 4 conspired with the accused appellant(accused no. 5) to kill RSS members and in furtherance of their acts, they committed offence punishable under Sections 302, 201 read with Section 34 IPC. The accused persons were said to be in possession of weapons without license, thereby it attracted the offence punishable under Sections 3 and 27 of the Arms Act. Further, the acts of the accused persons including the accused appellant amounted to offences punishable under Sections 120B, 109, 150, 153A, 302, 201 read with Section 34 IPC and under Sections 16(1)(a), 18 and 20 of the UAP Act.

6.The appellant sought discharge under Section 227 CrPC along with other accused persons which came to be rejected vide order dated 2nd January, 2018 and framed charges against the accused persons including accused appellant. Special NIA Court under its Order dated 2nd January, 2018 while deciding the application of appellant seeking discharge under Section 227 CrPC observed that it was admitted by the defence counsel that the appellant is the President of Bengaluru unit of Popular Front of India(PFI) and the other accused persons nos. 1 to 4 are also the members of PFI. It was also admitted by the defence counsel that there was frequent telephonic/mobile phone conversation among the accused persons nos. 1 to 5 prior and subsequent to 16th October, 2016(the date of the incident) which gave rise to the Special NIA Court to arrive at a conclusion that the material placed in the charge-sheet on record gives rise to sufficient grounds of subjective satisfaction of prima facie case of alleged offence of conspiracy being hatched among the accused persons. It further observed that the accused appellant has failed to justify the necessary ingredients of Section 227 CrPC and finally held that the matter deserved to be proceeded with framing of charge. The said order came to be affirmed by the High Court on dismissal of the writ petition preferred by the unsuccessful appellant vide its impugned judgment dated 22nd November, 2018.

7. Ms. Kamini Jaiswal, learned counsel for the appellant submits that the impugned judgment has resulted in grave miscarriage of justice and is based on an erroneous interpretation of the factual circumstances of the case and the High Court has not taken into consideration the oral and documentary evidence on record in the proper perspective which has vitiated the entire proceedings and led to gross injustice.

8. Learned counsel further submits that the bare reading of the extract of charge sheet reveals that the prosecution has failed to adduce evidence which was against the appellant.

That CW 1 to 53, 55 to 76, 78 to 86, 86-92, 94 to 96 and 98 to 112 did not whisper anything against the appellant and the other witnesses relied by the prosecution to make out a case against him are the witnesses of the Mahzar proceedings who provided some information like bank account details and call data records, which in no way discloses any incriminating material against the appellant.

9. According to the learned counsel, the charge against the appellant is without any basis and merely on suspicion as there is nothing to reveal that the appellant was the main conspirator behind the alleged murder termed as a terror attack. The allegation that he planned the conspiracy along with other PFI members to kill RSS members and arranged conspiracy meetings and executed the plan of striking terror among a section of people belonging to RSS is concocted and without any substance as nothing incriminating has been recovered from the appellant or to support the prosecution story and in the given circumstances, rejecting his application for discharge under Section 227 CrPC by the trial Judge and affirmed by the High Court is not sustainable in law.

10. Learned counsel further submits that though the alleged incident as per the case of prosecution has been planned and executed on the last day of Navaratri being Vijayadashmi whereas it is a matter of record that the Navaratri was already over on the said date and the Vijayadashmi was on 11th October, 2016 and the alleged incident was on 16th October, 2016. Such a statement was made just to prejudice the mind of the Court to frame charge against the appellant which is unreasonable and unjustified and this has not been looked into and appreciated by the High Court in its impugned judgment.

11. Learned counsel further submits that none of the accused in this case are the member of any terrorist organisation which are banned under the schedule of UAP Act and, therefore, the question of invocation of UAP Act, after completion of investigation, was not attracted and at least the charge framed against him for the offences under UAP Act was not legally sustainable in law.

12. Per contra, Mr. Aman Lekhi, learned ASG appearing for the respondent with his usual vehemence submits that Section 15 of UAP Act covers both the act of an individual and a terrorist gang/association and as per Section 20 of the UAP Act, it is not necessary for an association/organisation to be included in the schedule, for punishing a terrorist act carried out by them.

13. Learned counsel further submits that the incident occurred on a day when the RSS workers had organised a path sanchalan, and the deceased, who was dressed in uniform, was brutually attacked by the accused persons whereby his throat was slit in a single blow, resulting in his immediate death. Admittedly, there is no animosity between the appellant and deceased. The nature of the act including the recoveries made shows that the consequences were intended to be beyond the physical act itself and was to create fear in the minds of the people at large and to create insecurity and foster disharmony.

14. Learned counsel further submits that the series of evidence reveals the appellant's involvement in the commission of crime:-

i) Appellant is the District President of the Popular Front of India(PFI) which has been involved in killings of several RSS members/Hindu leaders in Karnataka in the past three years.

ii)Seizure of banner dated 12th December, 2016 which bore the names and photograph of all the accused including the accused appellant.

iii) Several telephone exchanges between accused no. 1 to 4 and the accused appellant.

iv)Disclosure report dated 4th November, 2016 which reveals that a leather purse containing a letter written by accused no. 4 was discovered at the office of the appellant, wherein accused no. 4 list out 17 murders committed by PFI in near past with a note as to why the murder of deceased Rudresh had attracted so much attention as compared to other murders.

v) Investigation revealed that about 8-9 months prior to the incident, all the accused had attended indoctrination classes organised by accused appellant and other members where accused persons were recruited and brainwashed by the appellant to kill RSS members.

vi) Accused no. 4 confesses that accused appellant was the mastermind behind the killing of RSS members.

15. Learned counsel further submits that there is a strong suspicion which leads the Court to think that the appellant has committed an offence which clearly borne out from the charge- sheet placed on record and the trial Court rightly held that the prima facie case was made out against the appellant and after the matter has been elaborately considered by the High Court in revisiting the factual matrix taken note by the trial Court under its Order dated 2nd January, 2018, no interference at least is called for in the appeal preferred at the instance of the appellant.

16. Before we proceed to examine the facts of the present case, it may be apposite to take note of the ambit and scope of the powers of the Court at the time of considering the discharge application. This Court in *Union of India Vs. Prafulla Kumar Samal & Ors*[1]. had an occasion to consider the scope of Section 227 CrPC and it held in paragraph 7 as under:-

"7. Section 227 of the Code runs thus: "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."

The words "not sufficient ground for proceeding against the accused" clearly show

that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

17. In *Sajjan Kumar Vs. Central Bureau of Investigation*[2], this Court had an occasion to consider the scope of Section 227 and 228 CrPC. The principles which emerged therefrom have been taken note of in para 21 as under:-

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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 disclose 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."

18. The exposition of law on the *subject has been further considered by this Court in State Vs. S. Selvi and Ors*[3]*. followed in Vikram Johar Vs. State of Uttar Pradesh and Ors*[4]

19. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC 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 discloses 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 possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.

20. If we advert to the facts of the instant case, initially a criminal case came to be registered in Crime No. 124/2016 on 16th October, 2016 for the offences punishable under Section 302, 34 of IPC by Commercial Street Police over the murder of one Rudresh. Initially, four accused persons were arrested in connection with the crime. Subsequently, National Investigation Agency(NIA) registered first information in R.C. No. 24/2016 including the appellant-Asim Shariff (accused no. 5) in the list of the accused. The task of investigation was entrusted to NIA by the Union of India, Ministry of Home Affairs(Internal Security-1 Division), North Block, New Delhi through its orders dated 7 th December, 2016 as per Section 6(5) read with Section 8 of the National Investigation Act. In obedience to the said order, the NIA, Hyderabad Branch, registered the case in RC 04/16-NIA- HYD for the offences punishable under Sections 120B, 109, 150, 153A, 302, 201 read with Section 34 IPC; Sections 3 and 27 of the Arms Act and Sections 15, 16, 17, 18 & 20 of the UAP Act.

21. After completion of the investigation, final report was submitted before the trial Court against the accused persons 1 to 5 on 21st April, 2017. At this stage, the application filed

by the accused appellant under Section 227 CrPC seeking his discharge from the charge for the aforesaid offences came to be dismissed by the trial Court, after recording cogent reasons and order of framing charge against him and other accused persons (accused nos. 1 to 4) under its Order dated 12th January, 2018. The extract of the order is as follows:-

> "22. It is needless to mention herein that this Court has already taken the cognizance of offences alleged and it is needless to mention herein that obtaining of sanction is condition precedent as on the date of taking cognizance of the offences alleged. That the Sanction having been obtained by the NIA at the time of cognizance of alleged offences and the cognizance having been already taken by this Court, this court is of the firm view that it is not good to pass any orders in respect of sanction for the simplest reason that passing of any orders with regard to genuineness or otherwise of sanction, the same would amounts to an act of usurping of appellate or revisional jurisdiction. That the order of taking cognizance is intact even on this day. Therefore, for the reasons assigned in these paragraphs and in the preceding paragraphs of this order, NIA has established that material adduced by it are sufficient enough to proceed with the case and that the same do give subjective satisfaction of existence of prima-facie case of alleged offences. Therefore, the subject matter of Point No.2 deserves to be answered in the Negative, that of Point No.3 deserves to be answered in the affirmative and that of point No.4 in the Negative and the said points are hereby answered accordingly. This court proceeds to pass the following:
>
> ORDER
>
> The application filed under Section 227 Cr.P.C. by the accused No.5 is hereby dismissed. That the case on hand deserves to be proceeded with framing of charge in respect of alleged offences as mentioned in the charge sheet as against all the accused persons."

22. The unsuccessful appellant filed writ petition under Article 226 and 227 of the Constitution of India read with Section 482 CrPC. The High Court after analysing the entire material on record confirmed the view expressed by the trial Judge and held as under:-

> " No doubt the present petition is invoking writ jurisdiction under the Constitution of India and inherent powers of this Court, regard being had to the fact that in the earlier round of litigation, the stand of the petitioner was specifically negatived by the orders of this Court. The matter has been urged, assessed and adjudicated in the proceedings and again the petitioner has come for the next round. On facts or in law there is no material worth to suggest fallibility of the proceedings in Spl. C.C. No.181/2017 pending on the file of XLIX Addl. City Civil & Sessions Judge (Special Court of trial of NIA cases) at Bengaluru for the offences punishable u/S 302, 201 r/w Sec. 34 of IPC and Section 3 and 27 of Arms Act and under Section 15, 16, 17, 18 and 20 of Unlawful Activities (Prevention) Act, 1967."

23. That apart, we have also gone through the relevant record and extract of the charge-

sheet placed on record for perusal, the fact reveals that the accused appellant is the President of Bengaluru unit of Popular Front of India(PFI) and the other accused nos. 1 to 4 are also the members of PFI. It reveals from the charge-sheet that there was frequent telephonic/mobile conversation between appellant(accused no. 5) with other accused persons(accused nos. 1 to 4) prior and subsequent to 16th October, 2016 (the alleged date of incident) which persuaded the Court to arrive to a conclusion that there is a prima facie material of conspiracy among the accused persons giving rise to sufficient grounds of subjective satisfaction of prima facie case of alleged offences of conspiracy being hatched among the accused persons and truth & veracity of such conspiracy is to be examined during the course of trial.

24. After going through the records and the judgment impugned before us, in the present facts and circumstances, we find no error in the judgment passed by the trial Court and confirmed by the High Court by the impugned judgment dated 22nd November, 2018 which calls for our interference.

25. We make it clear that what has been observed by this Court is only for the purpose of disposal of the present appeal and any observations made shall either way not prejudice the rights of the parties during the course of trial and the trial Court may also not to be influenced/inhibited by the observations made by us and proceed with the trial independently in accordance with law.

26. With these observations, the appeal is dismissed.

27. Pending application(s), if any, stand disposed of.

Judgment Referred.

[1]*(1979)3 SCC 0004*
[2]*(2010)9 SCC 0368*
[3]*(2018)13 SCC 0455*
[4]*(2019) 6 SCALE 0794*