(2016) 95 ACrC 963 : (2016) 7 ADJ 401 : (2016) 165 AIC 868 : (2016) 4 CriCC 218

ALLAHABAD HIGH COURT

Case No: Criminal Misc. Application No. 25234 of 2015

Om Prakash Shyamdasani		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: July 8, 2016

Citation: (2016) 95 ACrC 963 : (2016) 7 ADJ 401 : (2016) 165 AIC 868 : (2016) 4 CriCC 218

Hon'ble Judges: Bharat Bhushan, J.

Bench: Single Bench

Advocate: Sharique Ahmed and Dileep Kumar, Advocates, for the Appellant; Govt. Advocate, Sangam Lal Kesarwani and Vinay Saran, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

Bharat Bhushan, J.â€"Applicants Om Prakash Shyamdasani, Smt. Poonam Shyamdasani, Mukesh Shyamdasani and Kamlesh Shyamdasani

have directed this application under Section 482 Cr.P.C. against the impugned order dated 3.8.2015 passed by the Sessions Judge, Kanpur

Nagar in Sessions Trial No.36 of 2015 (State v. Piyush Shyamdasani and others) whereby discharge application moved by the applicants has

been rejected and subsequently they have been charged under Section 202 I.P.C. on 4.8.2015.

2. Brief facts in the nut shell are that marriage of co-accused Piyush Shyamdasani was solemnized with deceased Jyoti Shyamdasani on

28.11.2012 according to Hindu rites and on 27.7.2014 co-accused Piyush Shyamdasani took his deceased wife Jyoti Shyamdasani for dinner at

restaurant in Kanpur Nagar. After sometime Piyush Shyamdasani lodged an F.I.R. at Police Station Swaroop Nagar, District Kanpur Nagar

bearing Crime No.151 of 2014 under Sections 323, 147, 392, 364 I.P.C. alleging that some 7-8 unknown miscreants had attacked his wife while

he was coming back in his Honda Accord Car (U.P. 78 BR 5009) from restaurant. The miscreants abducted his wife and ran away with his car.

3. In the intervening night of 27-28.7.2014 the corpse of Jyoti Shyamdasani was recovered during investigation and some persons namely,

Awadhesh Chaturvedi, Renu @ Akhilesh Kanaujia, Sonu Kashyap and Ashish Kashyap etc. were arrested from whom weapon as well as some

articles of jewelry belonging to deceased Jyoti Shyamdasani were allegedly recovered. Therefore, Section 302 and 120 B I.P.C. etc were added

in the case.

4. The report was lodged by the husband Piyush Shyamdasani but investigation took interesting turn. Police concluded that the entire episode was

managed by husband Piyush Shyamdasani and some of the family members and deceased Jyoti Shyamdasani was done to death at their instance.

5. Subsequent to investigation a charge sheet was filed under Sections 302 I.P.C against co-accused persons while charge sheet under Section

202 I.P.C. was submitted against the applicants. The case was committed to the court of Sessions. State as well as respondent no. 2 Shanker

Nath Dev, father of deceased moved application for framing of charges under Sections 302, 120-B,201 and 202 I.P.C. against the applicants

also. A discharge application was moved on behalf of applicants even under Section 202 Cr.P.C. claiming that they have been roped in merely

because they are helping their son Piyush Shyamdasani and they have been falsely implicated in order to deter them from conducting the pairavi of

co-accused Piyush Shyamdasani.

6. The trial court considered the arguments of both parties and thereafter concluded that there are sufficient material against the applicants for

framing of charges under Section 202 I.P.C. The court also concluded that there is no material to support charges under other section, so

discharge application was dismissed. By the same order the trial court also concluded that there is sufficient material to frame charges against

Piyush Shyamdasani under Sections 364, 302, 201, 203 and 120-B I.P.C. Co-accused were also charged under Sections 364, 302, 201, 203

and 120-B I.P.C. read with Section 34 I.P.C. The charges were framed on next date i.e. on 4.8.2015. This order is under challenge before this

Court at the instance of applicants.

7. Heard Sri Dileep Kumar for applicants, Sri Vinay Saran and Sri Sangam Lal Kesarwani for respondent no. 2 and learned A.G.A. on behalf of

State.

8. Learned counsel for applicants has argued that applicants have been falsely implicated merely because they are related to co-accused Piyush

Shyamdasani, the husband of deceased Jyoti Shyamdasani. They were neither present at the place of occurrence nor is any evidence against them.

Om Prakash Shyamdasani is father and Smt. Poonam Shyamdasani is mother of co-accused Piyush Shyamdasani. They have been falsely

implicated at the instance of respondent no. 2 while there is virtually no evidence against them.

9. It is submitted that ingredients of Section 202 I.P.C. are that the intentional omission to give information of offence by person bound to inform, is

not fulfilled in the instant case for the simple reason that as soon as the applicant no. 1 received information from his son Piyush Shyamdasani, he

immediately informed the Police by way of dialing No. 100 within short span of time. It is also stated that on the date of incident Sri Om Prakash

Shyamdasani and his other son Mukesh Shyamdasani, applicant no. 3 had gone to railway station, Kanpur Central for boarding Shramshakti train

for traveling to New Delhi on their prior reservation. They occupied the berth coupe. The information was received by them while sitting in

Shramshakti train. As soon as information was received by them from Piyush Shyamdasani about the abduction of deceased Joyti Shyamdasani by

unknown miscreants, both Om Prakash Shyamdasani and Mukesh Shyamdasani immediately left the train along with their luggage and boarded

their car which was already parked at the railway station.

10. Learned counsel for applicants have further argued that they informed the Police by dialing No. 100 though this information was communicated

by them in a distressed mental state. It has been further submitted that ingredients of Section 202 I.P.C. are not available in the case and they have

been falsely implicated despite the fact that both of them were not present at the place of occurrence.

11. Per contra Sri Vinay Saran, learned counsel for respondent no. 2 and learned A.G.A. have submitted that disputed questions of fact and

evidence and disputed defence of accused cannot be taken into consideration at this stage. It is settled position of law that charges can be framed

by the competent court of law on the basis of strong suspicion alone. They have drawn the attention of this Court towards the call details, other

relevant evidence and conduct of entire family to demonstrate that the entire family was involved completely in the murder of deceased Jyoti

Shyamdasani.

12. Learned counsel for respondent no. 2 has submitted that co-accused Piyush Shyamdasani was involved with another woman and still married

Jyoti Shyamdasani in arranged marriage and that; Piyush Shyamdasani and his family conspired with his paramour to assassinate Jyoti

Shyamdasani. The attempt to create the evidence of alibi by presenting railway tickets etc. is nothing but an evidence of mens-rea. Sri Saran has

also drawn the attention of this Court towards the call details of accused persons which indicate that co-accused Piyush Shyamdasani

communicated them at 23:42:54 yet they waited for about an hour to lodge the F.I.R. The call to Police at 100 number was made at 00:09:15. It is

relevant to submit that only single call was made at 100 number whereas all accused persons got the information of the alleged incident through

Piyush Shyamdasani on their respective mobiles but none of them made any phone call on 100 number till 12:09 hours. Applicant Om Prakash

Shyamdasani made call only on 12:09 hours. Sri Saran has further argued that the call details and the conduct of applicants indicate that despite the

abduction of daughter-in-law Jyoti Shyamdasani, they did not show any sigh of panic and strangely did not go to Police Station for lodging F.I.R.

or made any attempt for recovery of Jyoti Shyamdasani from the clutches of alleged kidnappers. The family is admittedly very wealthy owning

several vehicles and drivers at their disposal. They could have easily made attempts to search young and newly married daughter-in-law yet no

attempt was made and no information was furnished on time to the Police.

13. Law regarding framing of charges is now well settled. It is permissible for a trial Judge to sift and weigh the evidence for the limited purpose of

finding out whether or not prima facie case against the accused has been made out or not. The material to determine prima facie case would

depend upon the facts of each case. However it is not expected to decide the credibility and truthfulness of the available material at the stage of

charge. The disputed defence of accused cannot be taken into consideration at this stage. Sufficiency of material or evidence is not required for

framing of charges unless court finds that the materials are completely and absolutely absent for the purpose of trial. It is well settled that when

there is evidence indicating strong suspicion against accused, the trial court will be justified in framing of charge and granting an opportunity to the

prosecution to bring on record the entire evidence for the purposes of trial.

14. The Courts are not expected to conduct roving and fishing inquiry into credibility of material at this stage. The trial court is also not required to

evaluate the available evidence on merits at this stage or to conclude on the merits of defence case at this stage.

15. In Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424 it has been held that sufficiency and credibility of material need not be evaluated at the

stage of charge. The Court has held thus:-

9. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused

may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such

exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of

prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a

prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled

proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for

discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the

sides may be considered appropriately on conclusion of trial.

16. The Hon''ble Apex Court in Kanti Bhadra Shah v. State of West Bengal, 2000 SCC (Crl.) 303 has held that whenever trial court decides to

frame charges, it is not necessary to record reasons thereof or to be discuss the evidence in detail. The Apex Court has made following

observations:

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. 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 court procedures and to chalk

out measures to avert all roadblocks causing avoidable delays.

17. Similarly, Hon''ble Supreme Court in State v. S. Bangarappa, 2001 (Criminal) 152, expressed their unhappiness in the following words:-

time and again this court has pointed out that at the stage of framing charge the court should not enter upon a process of evaluating the evidence

by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be

adduced as evidence are sufficient for the court to proceed further. (vide State of M.P. v. Dr. Krishna Chandra Saksena, [1996 (11) SCC 439].

18. The Hon''ble Supreme Court in Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, A.I.R. 1980 SC 52 has held

that at the state of trial, the truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be meticulously judged.

The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied.

At this stage, even a very strong suspicion founded upon materials before the court, which leads him to form a presumptive opinion as the existence

of the factual ingredients constituting the offence alleged; may justify the framing of charge.

19. Use of power under Section 482 Cr.P.C. for questioning criminal proceedings are not easily and routinely used unless there are compelling

circumstances for the same. A criminal trial cannot be questioned at the initial stage unless the un-controverted evidence does not disclose even

prima facie the commission of any offence. It is also pertinent to point out that parameters for exercise of power under Section 482 Cr.P.C. has

now been laid in detail in State of Haryana and others v. Bhajan Lal and others 1992 A.I.R. 604 wherein 7 kinds of cases have been delineated

where court may exercise the power to quash the criminal proceedings.

20. Coming back to the facts of the perused case, it is evident that Jyoti was brutally murdered. Her husband lodged an F.I.R. against unknown

persons but investigation disclosed complicity of the husband himself. Investigating Officer and the trial Judge are satisfied with the available

material to conclude that Piyush Shyamdasani and co-accused have committed the crime. Present applicants have only been charged under

Section 202 I.P.C. Section 202 I.P.C. is reproduced for ready reference:

202 I.P.C.-Intentional omission to give information of offence by person bound to inform. - Whoever, knowing or having reason to believe that an

offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished

with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

21. The said Section speaks of punishment for intentional omission of those who under law are required to furnish information in respect of

commission of crime. The investigation has concluded that applicants were aware of commission of crime but they did not furnish this information

promptly to the police personnel. The allegations are that they in fact tried to manufacture the plea of alibi. It would not be appropriate for this

Court to evaluate the plea of alibi as this is essentially the plea of evidence which cannot be adjudicated at initial stage with or without evidence.

22. A question whether the applicants had the knowledge of commission of crime or had reason to believe that said offence had been committed is

a question of fact which cannot be adjudicated in the petition under Section 482 Cr.P.C. A bare perusal of Section 202 I.P.C. would disclose the

knowledge of commission of offence and furnishing this information are all questions of facts which cannot be adjudicated in the petition under

Section 482 Cr.P.C. or even at the stage of framing of charges. What is clear is the fact that Jyoti Shyamdasani and Piyush Shyamdasani visited

restaurant in the evening of 27.7.2014 and Jyoti Shyamdasani was murdered while coming back from restaurant. A false story was allegedly

cooked up by co-accused Piyush Shyamdasani. Call details and admission on the part of applicants indicate that they were in contact with Piyush

Shyamdasani. It is also evident that information was furnished to Police No.100 with some delay. Whether there are satisfactory reasons for this

delay or not is again question of fact. Whether information could have been given with more alacrity can only be adjudicated by trial court. Section

39 of Cr.P.C. imposes a duty on persons to furnish information of certain offences to the Police or the Magistrate. It is expected that every

persons shall, in the absence of any reasonable excuse, will forthwith give information to the nearest Magistrate or Police officer of such

commission. The said section also indicates that burden of proving the existence of excuse shall lie upon the person who is in possession of such

information.

23. A careful perusal of record discloses that there are sufficient material to indicate that applicants had some knowledge as well as reason to

believe a commission of offence. It was therefore their duty to furnish this information to the authorities. Whether they did so or not or whether they

did so with required promptness can only be adjudicated during trial after recording of evidence. As far as non cognisable nature of offence is

concerned, it is settled that if facts discloses commission of both cognisable and non cognisable offences, they can be tried together and no

separate complaint is required for non cognisable offences. It is well settled that while investigating a cognisable offence and presenting a charge

sheet for it, police is not debarred from investigating any non cognisable offence arising out of the same facts and including them in the charge sheet.

In this connection the provision of Section 155(4) can also be taken into consideration. The Apex Court in State of Orissa v. Sharat Chand Sahu,

(1996) 6 SCC 435 held thus:

12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the

controversy about investigation of non-cognisable offences by the police without the leave of the Magistrate. The statutory provision is specific,

precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police

disclose both cognisable and non-cognisable offences, the police would be acting within the scope of its authority in investigating both the offences

as the legal fiction enacted in Sub-section (4) provides that even a non-cognisable case shall, in that situation, be treated as cognisable.

13. This Court in Preveen Chandra Mody v. State of M.P. AIR 1965 SC 1185 has held that while investigating a cognisable offences and

presenting a charge-sheet for it, the police are not debarred from investigation any non-cognisable offence arising out of the same facts and

including them in the charge-sheet.

24. In view of the above, there is no illegality, perversity or impropriety or jurisdictional error in the order impugned. The application under Section

482 Cr.P.C. is, accordingly, dismissed. However the trial court is directed to conclude the trial as expeditiously as possible, preferably, within a

period of 12 months from the date of production of certified copy of this order. Let a copy of this order be sent to concerned Court through

Sessions Judge Kanpur Nagar within ten days.