



GAHC010138822023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./673/2023

AZIZULLAH KHAN
S/O LATE NIAZ KHAN
R/O BORAHAPJAN
P.O. BORAHAPJAN
P.S. DOOMDOOMA
DIST. TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE PP, ASSAM

2:SHRI KAILASH KUMAR BAGARIA
S/O LATE BANSIDHAR BAGARIA
R/O NEAR SANI MANDIR
P.O. AND P.S. DIBRUGARH
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

JUDGMENT & ORDER (ORAL)

Date : 13-03-2024

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr.



A.M. Bora, learned Senior Counsel assisted by Mr. V.A. Choudhury, learned counsel appearing for the respondent No. 2 and Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) read with Article 227 of the Constitution of India for quashing of the order dated 29.05.2023 passed by the learned Additional Sessions Judge, Dibrugarh in Sessions Case No. 349/2022 whereby the prayer of the petitioner for discharge from criminal charges was rejected and thereupon, framed charges under Section 120(B)/306 of the Indian Penal Code, 1860 (IPC for short).

3. The case of the petitioner is that on 01.07.2022 one Vineet Bagaria (since deceased) lodged an ejahar against Baidulla Khan and Sanjay Sharma alleging that they were threatening with dire consequences. Thereafter, the father of the deceased Kailash Bagaria lodged another ejahar on 05.07.2022 before the Superintendent of Police, Dibrugarh alleging that Baidulla Khan, Nishant Sharma, Sanjay Sharma along with some other persons attempted to break their house premises and also gave life threats.

4. It is the further case of the petitioner that thereafter on 07.07.2022 Vineet Bagaria committed suicide and thereafter the father of the deceased Kailash Bagaria again lodged another ejahar on 07.07.2022 against Sri Baidulla Khan, Sri Sanjay Sharma and Sri Nishant Sharma alleging that owing to all misdeeds, physical and mental torture meted out to Vineet Bagaria, the later, lost his life. Accordingly, a case was registered i.e. Dibrugarh Police Station Case No. 390/2022.

5. It is the further case of the petitioner that the Investigating Agency



submitted charge sheet on 01.09.2022 in connection with Dibrugarh Police Station Case No. 390/2022 arising out of information dated 07.07.2022.

6. It is the further case of the petitioner that during investigation, the Investigating Officer recorded the statement of various witnesses under Section 161 CrPC and after completion of investigation, the Investigating Agency filed charge sheet on 01.09.2022 being Charge Sheet No. 337/2022 under Sections 306/34 IPC added Sections 120(B)/307 IPC before the Court below against five persons including the petitioner. Thereafter, on 29.05.2023, the Trial Court framed charges against the accused persons including the petitioner.

7. Though the petitioner has filed a petition under Section 227 CrPC for discharging him in the case, the learned Additional Sessions Judge, Dibrugarh, after hearing the parties, rejected the said application by the same order dated 29.05.2023.

8. Aggrieved by the said order, the present criminal petition has been filed.

9. Mr. A. Ahmed, learned counsel for the petitioner submits that the petitioner has not been named in the FIR. He further submits that the father of the informant has categorically said that only four persons are involved and the name of the petitioner is not disclosed in the statement of the father. He further submits that the petitioner is not 'Ajaz Khan' who is disclosed by the witnesses to be involved in the case in hand. He further submits that the material gives rise to suspicion and hence, the trial Judge ought to have discharged the petitioner. In support of the aforesaid submissions, the learned counsel for the petitioner relies upon the decision of the Hon'ble Apex Court in the *State of Bihar Vs. Ramesh Singh reported in (1977) 4 SCC 39*.

10. Mr. A.M. Bora, learned Senior Counsel for the respondent No. 2 on the

other hand opposes the prayer for quashing of the aforesaid order of discharge. He submits that the Criminal Court has applied its mind and by reasoned order, has rejected the prayer for discharge under Section 227 of CrPC. He further submits that there are materials available constituting the offence charged against the petitioner.

11. Mr. P. Borthakur, learned Additional Public Prosecutor also opposes the prayer. He further submits that there are sufficient materials available on records for proceeding against the petitioner.

12. I have heard the submissions made at the bar and have perused the materials available on records.

13. Before considering the merits of the claim of both the parties, reference is made to Section 227 of CrPC which reads as hereunder:

“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.”

14. It is clear that at the stage of Section 227 of CrPC, the Court has to exercise the judicial mind to the fact of the case in order to determine whether a case for trial has been made out by the prosecution or not. In assessing the fact it is not necessary for the Court to enter into the pros and cons of the matter or into, weighing or balancing of evidence and probability, which is otherwise the function of the Court after the trial starts.

15. At the stage of Section 227, the Court has to merely see from the records of the case as to whether or not there is sufficient ground for proceeding against the accused.

16. In this regard reference is made to the decision of the Apex Court in the case of *State of Karnataka Vs. L. Muniswamy reported in (1977) 2 SCC 699*, wherein the Hon'ble Apex Court enunciated the principle that for the purpose of determining whether there is sufficient ground for proceeding against the accused the Court possess a comparatively wider discretion in the exercise of which it can determine the question whether the material on record, if un-rebutted, is such on the basis of which a conviction is said reasonably to be possible.

17. Further reference is made to the decision of the Apex Court in the case of *M.E.Shivalingamurthy Vs. Central Bureau of Investigation, Bangalore reported in (2020) 2 SCC 768* wherein it has been observed that:

“Legal principles applicable in regard to an application seeking discharge

17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., P. Vijayan v. State of Kerala and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. 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 offence, then, there will be no sufficient ground for proceeding with the trial".

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the Cr.PC (See State of J & K v. Sudershan Chakkar and another, [AIR 1995 SC 1954](#)). The expression, "the record of the case", used in Section 227 of the Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (See State of Orissa v. Debendra Nath Padhi, [AIR 2005 SC 359](#))."

18. It is apparent from the aforesaid decisions that the expressions "record of the case" used in Section 227 of CrPC are the documents and the articles produced by the Prosecution. Therefore, the submission of the accused is to be confined to the materials produced by the police.

19. Thus, the test that has to be applied by the Criminal Court while exercising powers under Section 227 of CrPC with regard to an application seeking discharge of an accused is whether the materials on record, if un-rebutted, is such on the basis of which a conviction is said to be reasonably possible.

20. It appears from the statement of the prosecution witness i.e. Sri Mahabir Bagaria that from the recording made by the deceased before committing suicide, the name of the petitioner along with the other co-accused is implicated by the deceased. Further it appears from the last face book message of the deceased that he has implicated the five accused persons including the petitioner for his trauma. Therefore, there are materials available on record implicating all the five accused persons including the petitioner for the offence alleged.



21. In the instant case, the materials submitted by the prosecution if taken to be true on the face of it, the said are sufficient to proceed against the petitioner. As such, the petitioner is not entitled to be discharged from the criminal charges under Section 120(B)/ 306 of IPC in Session Case No. 349/2022.

22. Be it be mentioned that the Trial Court has also found that there are ample materials in the investigation to show that the FIR named accused Ajiz Khan is the petitioner who was present with the other co-accused. It is evident that the Trial Court after consideration of the record of the case and the documents submitted by the police therewith considers that there are sufficient materials to proceed against the petitioner.

23. Thus the inevitable consequence is that the Court of Additional Sessions Judge, Dibrugarh while rejecting the prayer for discharge of the petitioner under Section 227 of CrPC in connection with Dibrugarh Police Station Case No. 349/2022 was not in any error.

24. In view of the above, this Court finds no merits in the criminal petition warranting interference with the order dated 29.05.2023 of the learned Additional Sessions Judge, Dibrugarh in Sessions case No. 349/2022.

Accordingly, this Criminal Petition stands dismissed.

JUDGE

Comparing Assistant