

**CRIMINAL MISCELLANEOUS APPLICATION NO.88 OF 2002**

SHRI CAETANO INFANCIO  
D'SOUZA PINHO,  
son of Ernesto Agnelo  
D'Souza, resident of  
H. No.559,  
Poriebhat, Verna,  
Salcete, Goa.

... Applicant.

versus

STATE  
represented by Office  
Incharge Police Station,  
Verna.

... Respondent.

Mr. Sudin Usgaonkar, Advocate for the Applicant.

Mr. V. P. Thali, Additional Advocate General with  
Miss Susan Linhares, Additional Government Advocate  
for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 26TH JUNE, 2002.

**ORAL JUDGMENT**

By Order dated 27th March, 2002, the District & Sessions Judge, South Goa, Margao declined to accept the plea of the Accused for being discharged from Sessions Case No.6 of 2002 and the learned Sessions Judge, South Goa, Margao directed the framing of the charge against the Accused for an offence punishable under Section 307 of the Indian Penal Code and Section 25(1-A) and Section 27(1) r/w Section 3 of the Arms Act, 1959. The charge against the Accused for the aforesaid offences came to be framed on 27th

March, 2002. The Applicant/Original Accused, has filed the present Petition under Section 482 of the Code of Criminal Procedure in substance for quashing the charge framed against the Accused.

2. The facts, so far as it is necessary to state them for the purposes of dealing with the present Petition, are extremely few and simple, which are set out hereunder:-

The prosecution has alleged that the Applicant/Original Accused on 29th October, 1999 at about 4 p.m., by using a gun belonging to his parents fired a gun shot at the Complainant, one Caetano, son of Jose Francis D'Silva, causing him gun shot wound on his buttock. The prosecution has alleged that the act of the Accused was actuated on account of previous enmity. At the stage of the framing of the charge, the Applicant/Original Accused submitted before the learned Sessions Judge that an offence under Section 307 had not been established against him. The learned Sessions Judge, South Goa, Margao by his Order dated 27th March, 2002, for the reasons set out in the said Order, refused to accept the plea of the Applicant/Original Accused and directed the framing of the charge for the aforesaid offences.

3. The present Petition came to be filed in this Court on 25th June, 2002. It was pointed out to this Court that the Sessions Case No.6 of 2002 is fixed for recording the evidence of the witnesses today i.e. on 26th June, 2002 and looking to the urgency of the matter, this Petition was heard.

4. By consent of parties, this Petition under Section 482 of the Code of Criminal Procedure is taken up for final disposal at the stage of Admission.

5. Mr. Sudin Usgaonkar, the learned Counsel appearing for the Applicant/Original Accused has urged before me (i) the material in the charge-sheet in respect of enmity is extremely cryptic. (ii) the statement of the Complainant that the Accused was not having any licence to use the gun reflects on the animosity and the mala fide intention of the Complainant to falsely inveigle the Applicant/Original Accused in the crime. (iii) none of the so called eye witnesses have actually seen the Accused firing the gun. (iv) the injury which is caused to the Complainant is said to be a simple injury on the left buttock. (v) the bullet, which was reported as a foreign body shadow seen in the X'ray was not recovered. (vi) the Attachment Panchanama shows that

in all four fire arms were recovered but not from the custody of the Applicant/Original Accused. (vii) there is no satisfactory evidence of the ballistic expert that the weapons so attached had been used in the crime.

6. On the above points, it was urged by Mr. Sudin Usgaonkar, the learned Counsel appearing for the Applicant, that the learned Sessions Judge, South Goa, Margao ought to have discharged the Accused. The learned Counsel also stated that the High Court, while exercising jurisdiction under Section 482 of the Code of Criminal Procedure, had the powers to quash the charge as the trial itself would be an abuse of the process of Court.

7. Mr. V. P. Thali, the learned Additional Advocate General appearing for the State has submitted before me that the learned Sessions Judge, South Goa, Margao, while repelling the plea of the Accused for discharge has taken into consideration all the material produced by the prosecution and has come to a conclusion that the prosecution has prima facie established the commission of the offence by the Applicant/Original Accused. Mr. V. P. Thali, the learned Additional Advocate General has further submitted that once a charge has been framed, the High

Court, should not lightly interfere and must allow the trial to proceed. It is also urged by Mr. V. P. Thali, the learned Additional Advocate General that filing of the present application by the Applicant/Original Accused is a last ditch attempt to stall the trial which is set to commence from today.

8. Mr. Sudin Usgaonkar, the learned Counsel appearing for the Applicant/Original Accused in support of his contention that the High Court can quash the charge while exercising powers under Section 482 of the Code of Criminal Procedure, has relied on a Judgment of the Apex Court in **State of Delhi v. Gyan Devi and others** reported in 2000(4) Crimes 164(SC). Reliance in particular is placed on a Judgment of the Apex Court at para 7, which reads as under:-

"In the backdrop of the factual position discussed above, the question formulated earlier arises for our consideration. The legal position is well settled that at the stage of framing of charge the Trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the Court is to examine the materials only with a view to be satisfied that a prima facie case of commission

of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C. seeking for the quashing of charge framed against them the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the Trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases".

9. Reliance is placed by Mr. Sudin Usgaonkar, the learned Counsel appearing for the Applicant/Original Accused in a Judgment of the Apex Court in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others** reported in AIR 1990 SC 1962. The Apex Court in para 7 of the Judgment has held as under:-

"Again in Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, (1979) 4 SCC 274: (AIR 1980 SC 52) this Court observed in paragraph 18 of the judgment as under:

"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 the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of the commission of that offence".

From the above discussion, it seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may 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".

10. Mr. Sudin Usgaonkar, the learned Counsel appearing for the Applicant/Original Accused has also placed reliance on a Judgment of the Apex Court in **Satish Mehra v. Delhi Administration and another** reported in (1996) 9 SCC 766. The Apex Court in para 15 of the Judgment has observed thus:-

"But when the Judge is fairly certain that there is no prospect of the case ending in

conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. Most of the Sessions Courts in India are under heavy pressure of workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself".

11. Mr. V. P. Thali, the learned Additional Advocate General appearing for the Respondent has placed reliance on a Judgment of the Apex Court in **State of Maharashtra v. Som Nath Thapa** reported in AIR 1996 SC 1744. The Apex Court in the aforesaid Judgment has observed thus:-

"If there is ground for presuming that the accused has committed the offence, a Court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence. In Black's Law Dictionary word 'presume' has been defined to mean "to believe or accept upon probable evidence". Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged. "The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing



of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage".

12. Mr. V. P. Thali, the learned Additional Advocate General appearing for the Respondent has also placed reliance on a Judgment of the Apex Court in **Suresh Alias Pappu Bhudharmal Kalani v. State of Maharashtra** reported in (2001) 3 SCC 703. The Apex Court in the said Judgment has observed thus:-

"At the stage of framing of the charge the court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. The court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. Each case depends upon its particular facts and circumstances and sometimes even a remote link between the activities of an accused and the facts of the case may justify a reasonable inference warranting

a judicial finding that there is ground for presuming that an accused has committed the offence or at least to presume that the question of his being directly or indirectly involved in the commission of such offence is not to be ruled out".

13. Reliance is also placed by Mr. V. P. Thali, the learned Additional Advocate General on a Judgment of the Apex Court in **Om Wati and another v. State** reported in (2001) 4 SCC 333.

14. It is well settled by the various Judgments of the Apex Court which have been cited before me by the respective Counsel that the Court at the time of the framing of the charge has the undoubted power to sift and weigh the evidence but the sifting and the weighing of the evidence has to be done for a limited purpose of finding out whether the material produced by the prosecution prima facie indicates the commission of the offence by the Accused. In other words, whether on perusal of the material, the Court finds that there is ground for presuming that the Accused has committed the offence. Thus, the material produced by the prosecution should be capable of raising strong suspicion against the Accused regarding his culpability. If, on perusal of the said material the Court finds that there is a ground for presuming that the Accused has committed the offence,

the Court would be justified in framing a charge against him for the offence alleged.

15. The learned Sessions Judge, South Goa, Margao in his Order dated 23rd March, 2002, has referred to the complaint of the Complainant in which the Complainant states that on the day of the incident, he had seen the Applicant/Original Accused standing on the road side with a rifle in his hand and after the Complainant had walked at about a distance of 50 metres, he heard "a fire arm shot" and at the same time something had hit him on his "bumb". The statement of one Minguel, son of Rosario Rodrigues is to the effect that on the day of the incident he had noticed the Applicant/Original Accused walking on the road and he had heard a gun shot and the Complainant had collapsed on the road. He immediately rushed and noticed the Applicant/Original Accused crossing the road and going inside the house with a gun in his hand. The said Minguel Rosario Rodrigues also makes a reference to the presence of his neighbour one Cruz who had also rushed to the rescue of the Complainant. The learned Sessions Judge, South Goa, Margao has referred to the statement of Cruz Rego who has claimed that he also heard the gun shot and had seen the Complainant collapsing and had also seen the

Applicant/Original Accused crossing the road and going to his house carrying a gun in his hand. The learned Sessions Judge, South Goa, Margao has independently come to the conclusion that the material prima facie disclosed that the Accused had fired a gun shot causing injury to the Complainant. The learned Sessions Judge, South Goa, Margao, ofcourse has referred to the findings arrived at by his predecessor while granting bail. It is needless to mention that observations made while granting or refusing bail should not influence the Court while framing the charge. However, as the learned Sessions Judge, South Goa, Margao has independently sifted and weighed the material independent of the observations in the bail application, has come to a conclusion regarding the prima facie culpability of the Applicant/Original Accused, which findings are not assailable. It is true that the statements of the witnesses do not disclose that they actually saw the Accused firing a gun shot. However, the material so collected by the prosecution does prima facie indicate that it was the Applicant/Original Accused who had caused the gun shot injury to the Complainant.

16. It is true that the medical evidence indicates that the Complainant had received a simple injury on his left buttock. However, the medical

evidence categorically states that it was a bullet injury. Merely because the Complainant had received a bullet injury on his buttock, which in the opinion of the doctor was a simple injury, the Accused cannot escape the criminal responsibility. In judging the intention what has to be seen is the nature of the weapon used and the site where the injury was intended to be inflicted. It is not known as to how the injury to the buttock was inflicted. In any event, whether the Accused intended to inflict the injury is a matter which has to be appreciated after the prosecution has recorded the evidence. Failure of the Police for sending the bullet to the ballistic expert would not adversely affect the finding of the existence of prima facie case against the Accused.

17. The Order impugned in the present application was passed on 27th March, 2002. An application under Section 482 of the Code of Criminal Procedure was filed in this Court on 25th June, 2002. It was filed two days before the schedule date of the examination of the witnesses. It appears that this application was moved by the Applicant/Original Accused in order to stall the case which was scheduled to begin from today. This is nothing but a futile attempt to procrastinate the trial. In any event, I am of the considered opinion that the Trial Court was

perfectly justified in directing the framing of the charge for the aforesaid offences. There is thus no merit in the application of the Applicant/Original Accused and the same deserves to be dismissed.

18. In the result, Criminal Miscellaneous Application No.88 of 2002 is dismissed with no order as to costs.

P. V. HARDAS, J.