HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C No.270/2011
Cr.M.P. No.300/2011

Date of decision: 29.03.2012

Ravi Kumar Vs. State of J&K and anr.

Coram:

MR. JUSTICE J. P. SINGH.

Appearing Counsel:

For the Petitioner(s) : Mr. Rahul Pant, Advocate.

For the Respondent(s) : Ms. Z.S.Watali, Dy.A.G.

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i) Whether approved for reporting in Press/Media : Yes

ii) Whether to be reported in Digest/Journal : Yes

On the basis of the case set up by the prosecution in its Report under Section 173 Cr.P.C, a case for framing Charge under Section 201 RPC was found to have been made out against the Petitioner-Ravi Kumar, by learned 3rd Additional Sessions Judge, Jammu.

The petitioner is aggrieved by the Charge and, therefore, seeks its quashing invoking the inherent jurisdiction of the Court.

I have perused the statements of the witnesses recorded during investigation of the case, considered the submissions of learned counsel for the parties and gone through the case law cited at the Bar.

Although true it is, that some of the witnesses whose statements were recorded by the Police under

Section 161 Cr.P.C have indicated that the petitioner had lifted the dead body from the compound of his house and thrown it in the street and washed the blood from the place of occurrence so as to save him and others from police harassment; but that by itself may not be sufficient to hold the Charge under Section 201 RPC groundless in view of the statements of other witnesses, who are stated to have told the petitioner about *Ramesh Pradhan's* running away from the house in question whereafter the dead body of *Jaswant Rai* son of *Krishan Lal* was found in pool of blood in the compound. Therefore, it cannot be said that the petitioner was not aware about the commission of offence by *Ramesh Pradhan* who was seen by the witnesses running away from the place of occurrence where the dead body of Jaswant Rai was found lying in pool of blood.

The material on records, therefore, *prima facie* indicates that the petitioner's act was intended to screen the offender by washing the blood stains from the place of occurrence and shifting the dead body from the scene of crime.

At the time of framing Charge, the Court has to consider as to whether or not there was sufficient ground to presume that the accused has committed the offence, and at that stage, it is not to be seen whether the accused was to be convicted or acquitted and in this view of the matter, presumption of having committed the offence appearing against the accused

from the facts and circumstances of the case, would justify framing of Charge.

Harbans Lal v. State, reported as AIR 1967 Himachal Pradesh 10 and other judgments of the High Courts referred to by the petitioner's learned counsel may not be relevant to deal with the issue that falls for consideration in the case because the judgments pertain to the cases where the High Courts had formed opinion regarding intention of the accused on the basis of the evidence after conclusion of the trial and not at pre-trial stage.

Nathu and another v. State of Uttar Pradesh, reported as (1979) 3 SCC 574 too may not be of any help to the petitioner for similar reasons. Even otherwise what is said in *Nathu's* case (supra) does not support the petitioner's case, for, the view taken by the Hon'ble Supreme Court is that before a conviction under Section 201 RPC was recorded, it must be shown to the satisfaction of the Court that the accused knew or had reasons to believe that an offence had been committed and having got this knowledge tried to screen the offender by disposing of the dead body.

In the present case, the petitioner is stated to have known about the person who was suspected to have committed the offence and it was thereafter that he removed the dead body from the scene of occurrence and washed the blood present on the place of occurrence to cause disappearance of evidence.

In the circumstances, in presence of strong presumption against the petitioner of his intention to screen the offender because of his act of removing the blood stains from the place of occurrence and removing the dead body therefrom, it cannot be said that the Charge against the petitioner is groundless.

I am supported in taking this view by what was held in *Tajan versus Emperor*, reported as AIR 1927 Sind 241, where it was observed as follows:-

> "In this connection it has been further urged that under S. 201 mere knowledge on the part of the accused, that his act is likely to screen the principal offender, is not sufficient and actual intention must be established. This is undoubtedly so; but whether the requisite intention is proved or not is a question to be decided on the facts of each case. Ordinarily where the Crown has satisfactorily proved that; (a) an offence has been committed for which some person is criminally responsible, and (b) that the accused caused the disappearance of the evidence of the commission of the offence or gave false information concerning it, as the case may be, a presumption arises in favour of the Crown that the accused did act with the requisite intent. That presumption may, however, be rebutted by circumstances or by direct evidence. Where it is so rebutted the accused is entitled to be acquitted except where he is charged with giving false information, in which case he may still be convicted under S. 203, I.P.C.
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> Lastly, our attention has been drawn to certain obiter dicta in the judgment delivered by me in Adho v. Emperor (19), and it is urged that there should be evidence to prove an intention to screen a specified offender. I must admit that the passage referred to is not very precise and is open to the construction put upon it by the learned counsel as through a typing error the expression "specified offender", instead of the expression "offender", has got into the passage. I take this early opportunity of removing any misapprehension thereby created. There is nothing in the section to require the Crown to prove that the accused intended to screen a specified offender.
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> An intention to screen an offender unknown to the Crown is sufficient. The law in England in this respect appears to be the same. This is clear from the provision in S.2 of 11 and 12 Vic. c.46, S. 3, re-enacted in 24 & 25 Vic. c. 44, altering the previous law and expressly

> providing that an accessory after the fact may be indicted and convicted as such whether the principal felon had been convicted or not or was not amenable to justice.
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> The facts of Adho's case (19) were somewhat peculiar. The accused were charged under S.202, I.P.C, for failure to give information as to the death of a woman Mahnaz and were further charged under S. 201, with having subsequently given false information to the police as to the cause of her death. It was after the police had been apprised of the murder and had exhumed the body that the accused were said to have given false information. Their object in supplying false information to the police was equally open to the suggestion that they wished thereby to save themselves from being run in under S.202, I.P.C, and not to protect the principal offender. Any presumption, therefore, arising under S. 201 was rebutted by the circumstances of the case. There is nothing in the evidence in the present case to rebut the presumption of such intention provided the other ingredients of the offence are made out. The first point urged on behalf of the appellant, therefore, fails."

For all what has been said above, there is no scope for exercise of jurisdiction under Section 561-A Cr.P.C to interfere with Order dated 08.06.2011 of learned 3rd Additional Sessions Judge, Jammu.

This Petition is, therefore, found without merit, hence dismissed.

(J. P. Singh)
Judge

Jammu
29.03.2012
Pawan Chopra