

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Case: 561-A No. 167/2012 CMA No. 188/2012

c/w

Cr. Rev. No. 39/2012 Cr. MA No. 37/2012

Date of order: 04.06.2012

Ajab Singh Wazir	v.	State th. Spl Public Prosecutor, Jmu
Trilochan Singh	v.	State th. SHO, Bahu Fort

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

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| 1. Whether approved for Law Journal? | Yes |
| 2. Whether approved for publication in Press? | |
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Appearing counsel:

For petitioner(s) : Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate
Mr. Anil Sethi, Advocate in Cr. Rev. No. 167/2012

For respondent(s):

(Oral)

Order dated 08.05.2012 passed by the learned Principal Sessions Judge, Jammu is called in question, wherein charges have been ordered to be framed against the petitioners-accused. Petitioner in the revision petition has prayed for quashment of the aforementioned order and requested for treating the same as petition under Section 561-A. The revision against the order of framing of charge is not maintainable, as order framing of charge is interlocutory order and the revision against the same is barred under Section 435(4)(a) of the Criminal Procedure Code.

At the request of learned counsel for the petitioner, revision petition is treated as petition under Section 561-A Cr. P. C.

Since similar questions are involved in 561-A No. 167/2012 also, at the request of learned counsel for the petitioners, both are taken up together for consideration.

FIR No. 107/2006 under Sections 302/396/201/120-B/109 RPC was registered in Police Station, Trikuta Nagar on the allegations that one Rajinder Bhushan Chopra, his wife Madhu Chopra, his daughter Saloni Chopra, Servant Sonu and Driver Jagan were killed and before killing them their hands and legs were tied. It was also alleged that dead bodies were lying on the floor in a pool of blood and the vehicle JK02 AC-0030 was also taken away. After investigation of the case report under Section 173 Cr. P. C. was filed. Subsequently, series of supplementary challans were filed and the present petitioners were send up for trial by filing of third supplementary challan. Learned trial Judge vide order dated 08.05.2012 ordered for framing of charges against the present petitioners under Sections 302/120-B RPC. It is this order, which is called in question, in both the petitions.

Mr. P. N. Raina, learned Senior counsel appearing on behalf of accused-Trilochan Singh Wazir, submitted that it is a case of no evidence against the petitioner, as such, charge could not have been framed against him. Learned counsel submitted that though the occurrence took place in the year 2006, but the statement of prosecution witnesses Surinder Singh @ Kala, Rajinder Singh @ Raju Simblia and Ramesh Kumar alais Raju were recorded in the year 2011 and it is the evidence of these witnesses which has been made basis by learned trial Judge for framing of charges against the petitioner.

Learned counsel submitted that these persons having not been named as accused persons, their evidence could not be taken into consideration by the learned trial Judge for framing of the charge against the petitioner. Learned counsel also submitted that it appears that investigation agency wanted these witnesses to make confessional statements, but before the learned Magistrate they made exculpatory statements. Learned counsel submitted that in terms of Section 10 of Evidence Act, statement of these witnesses could not be considered and relied upon for ordering framing of charges against the petitioner. Learned counsel in support of his contention referred to and relied upon judgment of Hon'ble Supreme Court reported in 2000 (5) SCC 440 and 2000 (6) SCC 286 & 269. Learned counsel submitted that evidence of the aforementioned witnesses, being inadmissible in evidence, would not become basis for framing of charges against the petitioner-accused. Learned counsel submitted that the case would require in-depth examination by the court.

Mr. Anil Sethi, learned counsel appearing on behalf of accused-Ajab Singh Wazir, submitted that an application was filed before the learned trial Judge wherein prayer was made that the prosecution witnesses, Surinder Singh @ Kala, Dinesh Kumar @ Raja DC and Rajinder Singh @ Raju Simblia be summoned as accused persons and cognizance of offences be taken against them for having committed illegal omission and commission in facilitating the alleged crime. Learned counsel in support of his contention referred to Sections 2, 32 and 176 of RPC. Learned counsel also referred to Section 40 of Cr.

P. C. Learned counsel submitted that these witnesses did not give information to the Police about the commission of offence from 2006 onwards, thus are to be treated as co-accused and the conspiracy having ceased to exist, even in terms of section 10 of Evidence Act, their statements cannot be read against the petitioner. Learned counsel submitted that the charges framed against the accused-petitioner cannot be sustained in law.

The trial before the Court of Sessions is to be conducted in accordance with the provisions of law as contained in Chapter XXXIII. Section 268 of Cr. P. C. provides that if upon consideration of the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution, the Judge considers that there is no sufficient ground for proceeding against the accused he shall discharge the accused and record his reasons for so doing. Whereas Section 269 of the Cr. P. C. provides that if, after such consideration and hearing as aforesaid, Judge is of the opinion that there is ground for presuming that the accused has committed an offence, then he has statutory obligation to order for framing of charges against the accused person.

Legislatures in their wisdom have used two different expressions in Sections 268 and 269 of Cr. P. C. Whereas while discharging an accused, learned Judge has to hold that there is no sufficient ground for presuming that offence has been committed by the accused, which would mean that there is literally not even a shred of evidence

available on record which would enable the Court to put the accused on trial.

For framing of charge in terms of Section 269 Cr. P. C. what is to be seen is that in the opinion of the learned Judge there is ground for presuming that accused has committed offence for which he is required to be charged and put on trial. It is on the basis of some evidence that the opinion is to be recorded by the learned Judge that there is ground for presuming that the accused has committed offence. This, otherwise, would mean that the investigating agency has brought before the learned trial Judge some evidence which, in his opinion, would result in framing of charges against the accused persons.

Reverting back to the facts of this case, the evidence of prosecution witness, Surinder Singh @ Kala and other two witnesses Rajinder Singh and Ramesh Kumar would show that an opinion can be framed at pre-trial stage that there is ground for presuming that petitioners have committed offence under Section 302/120-B RPC. The prosecution witness, Surinder Singh, in his statement recorded on 09.06.2011 has stated that accused- Trilochan Singh Wazir said that Chopra and his entire family is to be done away with and he is prepared to invest any amount for accomplishing the said purpose.

Similarly, from the statement of prosecution witness, it transpires that it was conspired that Chopra will be dealt with by one Sanju at the instance of Tirlochan Singh Wazir.

Similarly, prosecution witness, Ramesh Kumar has given the details about the hatching of the conspiracy to kill the Chopra.

Prima facie, there is evidence for connecting petitioners accused with commission of offence and charges framed against them cannot be interfered with at this stage. The law laid down by the Hon'ble Supreme Court in the judgment cited at the Bar does not, in any manner whatsoever, exculpate the petitioners accused at this stage. The arguments of the learned counsel for the petitioners that the evidence of these prosecution witnesses, appears to be of co-conspirators and is to be looked into in terms of Section 10 of the Evidence Act, cannot be accepted at this stage. The investigating agency has treated these persons as prosecution witnesses and not as accused persons. Their evidence independently is to be considered, and it appears has been rightly considered by the learned trial Judge.

Submission of Mr. Anil Sethi, learned counsel appearing for Ajab Singh Wazir is that there has been legal omission on the part of three prosecution witnesses on whose evidence the charge has been framed against Ajab Singh Wazir-petitioner accused, so were to be summoned as accused. The reference made by the learned counsel to Sections 2, 32 and 176 of RPC and 40 of Cr. P. C. is of no consequence as the investigating agency has concluded the investigation of the case by treating these persons as prosecution witnesses. The investigating agency has not complained against any of the alleged omissions on the part of these prosecution witnesses. Even assuming for arguments sake that they should also have been booked as accused

persons, in such eventuality, if some evidence would have been recorded during the investigation of the case, then in view of the law laid of the Hon'ble Supreme Court in 2000 (5) SSC 440, their evidence could have been considered even at the stage of framing of charges. The arguments advanced at the bar are of no assistance to the petitioners-accused.

For the above stated reasons, these petitions, being merit less, are dismissed along with all connected CMA(s).

(Muzaffar Hussain Attar)
Judge

JAMMU
04.06.2012
Paramjeet