



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 20 of 2024

Date of Decision: 30.08.2024

Shri. Poimi Sana
S/o Smti Shar Sana,
R/o Tuber Kmai Shnong,
East Jaintia Hills District,
Meghalaya

.....Petitioner

-versus-

State of Meghalaya,
Represented by the Home Police Department,
Government of Meghalaya

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Panthi, Adv.

For the Respondent(s) : Mr. H. Kharmih, Addl. P.P.
Mr. S.A. Sheikh, GA

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication | |



in press:

Yes/No

J U D G M E N T

1. An FIR dated 08.11.2018 was lodged by S.I. A. Iawphniaw before the Officer-in-Charge, Khliehriat Police Station, East Jaintia Hills District, alleging that there was a case of robbery and attempted murder upon Smti. Agnes Kharshiing at Tuber Sohshrieh in the East Jaintia Hills District at about 1:30 pm on that day.

2. Accordingly, the FIR was registered as Khliehriat P.S. Case No. 195(11) 2018 under Section 307/392/34 IPC and investigation was launched. In course of investigation, a number of persons were suspected to be involved in the incident and many of them have been implicated as accused persons in the case. The Investigating Officer, upon investigation being completed, has submitted the charge sheet finding a prima facie case being made out against the named accused therein under Section 307/392/326/34 IPC, the petitioner herein being one of such accused persons.

3. Since the offences involved are sessions triable, the case was committed to the court of the Sessions Judge for trial. The case being renumbered as Session Case No. 21 of 2023, summons was issued to all the accused persons named in the charge sheet.

4. The petitioner having received the summons as well as the copy of the charge sheet had perused the same and finding that there is



no material evidence against him, he had filed an application under Section 227 Cr.P.C. with a prayer for discharge from the case. The application was registered as Crl. Misc Application No. 26 of 2023.

5. The learned Sessions Judge after hearing the parties had then passed the order dated 05.02.2024 rejecting the prayer of the petitioner. Being aggrieved by such order, the petitioner has now come before this Court with this instant criminal petition.

6. Mr. S. Panthi, learned counsel for the petitioner has submitted that the impugned order was passed without careful examination of the facts and circumstances of the case and the materials on record wherein is found no evidence as regard the complicity of the petitioner/accused person to warrant charges to be framed against him.

7. The learned counsel has also submitted that from the charge sheet what could be seen is that from the statement of the prosecution witnesses recorded under Section 161 and 164 Cr.P.C no witnesses have named the petitioner as one of the persons involved in the alleged incident.

8. Even the reliance of the learned Trial Judge on the Call Detail Records (CDR) collected from the mobile handset of the accused persons including that of the petitioner, there is no record found from the said mobile handset of the petitioner to implicate him or even to link him to the alleged incident. However, the learned Trial Judge without analysing the relevant evidence as far as the said CDR is concerned,



without any linkage, has by a blanket order implicated the petitioner in the case and his prayer for discharge was also rejected along with that of other accused persons in the case.

9. It is the submission of the learned counsel that the learned Trial Judge ought to have exercise his power under Section 227 of the Cr.P.C to discharge the accused person on the ground that firstly, there is no evidence or even suspicion as far as the involvement of the petitioner in the case is concerned and secondly, even if there is suspicion but with no grave suspicion the court ought to have discharged the petitioner/accused person.

10. In support of his contention, the learned counsel has cited the following judgments:

- i. Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368, para 17, 18 and 21;
- ii. State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp (1) SCC 335, para 102;
- iii. A.M. Mohan v. State represented by SHO & Anr., 2024 SCC Online SC 339, para 21 and 24.

11. Per contra, Mr. H. Kharmih, learned Addl. P.P appearing for the State respondent while resisting the argument advanced by the learned counsel for the petitioner has submitted that from the facts and circumstances of the case and the materials on record what is apparent is



that on receipt of the report of the incident regarding the attempt to murder and the severe assault on the person of the victim, Smti. Agnes Kharshiing, the Officer-in-Charge, Khliehriat P.S has registered a case being Khliehriat. P.S. Case No. 195(11)2018 under Section 307/392/34 IPC and investigation was launched.

12. In course of investigation the Investigating Officer had gathered all relevant evidence and had also examined a number of persons on the basis of which those persons who are suspected to be involved in the incident were arrested and charge sheet has eventually been submitted implicating as many as 26(twenty-six) persons as accused. As far as the petitioner herein is concerned, the I/O on coming to learn of his involvement in the incident, attempt was made to arrest him, however, in spite of the diligent efforts of the I/O it appears that the petitioner had absconded from his known place of residence. The I/O following due procedure has moved the concerned court and after issuance of warrant of arrest not being effective, the petitioner was eventually declared as an absconder and proclamation order under Section 82 Cr.P.C was issued against the petitioner. The action of the petitioner can only lead to one conclusion, that is, his involvement in the case and as such, the learned Trial Judge by passing the impugned order directing for framing of charge against him is justified.

13. The learned Addl. P.P has however conceded that there is no direct evidence in the form of statement by any of the witnesses to implicate the petitioner in the case however, on the basis of



circumstantial evidence and the fact that he chose to evade the investigation process, the decision to reject the application for discharge filed by him and others is well founded.

14. It is finally submitted that this is a case where the facts and circumstances would be sufficient enough to allow the trial court to continue with the proceedings and for appropriate charges to be framed against the petitioner and the other accused persons involved.

15. This Court taking into account the contents of the application under Section 482 Cr.P.C and also the contention and submission made by the respective counsels for the parties and also on perusal of the copy of the charge sheet annexed with the petition, is made to understand that on the basis of the said FIR dated 08.11.2018 lodged by S.I A. Iawphniaw in connection with a case of assault and attempt to murder, Smti. Agnes Kharshiing being the victim of the same, whereupon a police case was registered and investigation conducted, the I/O having found that there exist prima facie case involving the petitioner herein and others, the trial court had eventually proceeded for consideration of charge but was made to decide on an application under Section 227 Cr.P.C filed by the petitioner herein and others seeking their discharge from the liabilities of the case.

16. The learned Trial Judge on consideration of the said application seeking discharge registered as Crl. Misc Application No. 26 of 2023, after hearing the parties had passed the impugned order dated 05.02.2024 rejecting the said application. Hence this petition.



17. Before proceeding further, it would be but appropriate to look at the provision of Section 227 Cr.P.C which reads as follows:

“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.”

18. In course of a criminal trial one of the most important stages that a trial court has to undertake is the question of framing of charge. It is incumbent upon the trial court to consider this stage very seriously as it will have a far-reaching impact on the fate of the prosecution’s case as well as on the right of the accused person who may have to go through a long and arduous trial but may eventually be found innocent simply for the fact that charges which are unfounded have been foisted upon such accused person. Therefore, the law provides that the trial court shall consider all the materials on record, to sift the same with the intention to find out whether there are actually reliable evidence or no evidence at all to proceed against the accused person.

19. In this respect, the Apex Court in a catena of judgment has spelled out a number of principles which ought to be considered by the Trial Judge in accordance with the provision of Section 227 Cr.P.C.

20. Such principles as laid down by the Hon’ble Supreme Court is found in a number of judgments, even one such judgment dating back to the year 1979 where in the case of Union of India v. Prafulla Kumar



Samal & Anr. reported in (1979) 3 SCC 4, at para 10 is found the following:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, 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 does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

21. In the case of Sajjan Kumar (supra) relied upon by the



petitioner at para 17, the Hon'ble Supreme Court while discussing on the scope of Section 227 Cr.P.C has reiterated its decision made in the case of Prafulla Kumar Samal (supra).

22. In the light of the settled position of law as has been indicated hereinabove, coming to the facts and circumstances of the case of the parties herein, the learned Addl. P.P has candidly admitted that there is no direct evidence of the involvement of the petitioner as far as the incident of assault and attempt to murder upon the said victim is concerned, no witnesses examined by the I/O have named the petitioner as one of the perpetrators of the offence. However, the only allegation against the petitioner is based on the fact that he had absconded and refused to cooperate with the investigation till such time he voluntarily took part in the proceedings after obtaining bail protection, his actions can only lead to one conclusion that he is primarily involved in the said incident.

23. Even on perusal of the impugned order nothing has been pointed out as far as the direct involvement of the petitioner is concerned. The only reference made is that the petitioner had at some point of time absconded and failed to cooperate with the investigation. The learned Trial Judge has also rejected the application for discharge on the premise that *"On careful analysis of the CDR, it is seen that accused persons herein were somewhat present in and around the P.O at the alleged time of the incident."* Again, from the charge sheet what is noticed is the recording of the I/O as far as *"Data of CDR, CAF &*



Tower Location/Dump and their analysis” wherein is listed the names of 16(sixteen) accused persons with their mobile number, particulars etc., but there is no noting of the name and mobile number of the petitioner herein.

24. In view of the above observation, this Court is of the considered opinion that the learned Trial Judge has failed to look into the specific evidence as regard the involvement of the petitioner herein and has simply passed the impugned order clubbing the name of the petitioner along with the other accused persons.

25. This application has been preferred under Section 482 Cr.P.C on a two-prong prayer, that is, one for setting aside the impugned order dated 05.02.2024 and the other for quashing of the related proceedings as far as the petitioner herein is concerned.

26. This Court being convinced that the Trial Judge has committed manifest error in rejection of the application for discharge vis-à-vis the petitioner herein, the only conclusion would be that no charges can be framed against the petitioner, consequently, it stands to reason that if charges cannot be framed he is not to stand trial and accordingly the proceedings against him are liable to be quashed, for in not doing so, there would have occurred an abuse of the process of the court which would then attract the provision of Section 482 Cr.P.C.

27. In the final analysis, this Court is convinced that the petitioner has made out a case for setting aside and quashing of the impugned



order dated 05.02.2024 and also for dropping of the proceedings only in regard to his alleged involvement thereof which is accordingly done so herein.

28. The petitioner is henceforth discharged from all the liabilities in the case and similarly the bail bond executed also stands discharged.

29. Petition disposed of. No costs.

Judge