

SARANYA

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v.

BHARATHI AND ANOTHER

(Criminal Appeal No. 873 of 2021)

AUGUST 24, 2021.

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**[DR. DHANANJAYA Y. CHANDRACHUD AND
M. R. SHAH, JJ.]**

*Code of Criminal Procedure, 1973: s. 482 – Exercise of power under – Stage of framing of charge – High Court quashed and set aside the criminal proceedings qua co-accused-respondent no. 1 for the offences u/s. 420, 302 & 109 IPC – Correctness of – Held: High Court entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not – At this stage, while considering the application u/s. 482 Cr.P.C., this is not at all permissible – High Court was not conducting the trial and/or was not exercising the jurisdiction as an appellate court against the order of conviction or acquittal – Furthermore, there was ample material to show at least a *prima facie* case against respondent no. 1, the High Court ought not to have quashed the chargesheet qua respondent no. 1 – Order passed by the High Court quashing the chargesheet/criminal proceedings for the offences u/s. 420, 302 & 109 qua respondent no. 1 quashed and set aside.*

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s. 482 – Stage of framing of charge while considering the discharge application – Principles which the High Court to keep in mind while exercising jurisdiction u/s. 482 – Stated.

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Allowing the appeal, the Court

HELD: 1.1 There is sufficient material on record raising the strong suspicion against respondent no.1-A2 also. It has been found that A2-respondent no.1 who was serving in the Secretariat and was in touch with the deceased and the complainant as she used to go to Xerox shop owned by the deceased and she introduced A1 to the complainant and the deceased. It is specifically alleged that she said that she could manage to get the job/employment for the deceased but for that they had to pay.

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A It is true that as per the case of the prosecution and even as per the statement of the complainant, an amount of Rs. 5 lakhs was paid to A1. However, during the course of the investigation, an amount of Rs. 1 lakh 20 thousand has been recovered from the house of respondent no. 1-A2 at the instance of A2 herself. The so-called confessional statement of respondent no.1 is inadmissible in evidence. However, on the basis of such statement, there was a recovery of Rs. 1 lakh 20 thousand from the house of A2- respondent no.1. The other aspect whether the recovered amount of Rs. 1 lakh 20 thousand was the same amount which was given by the deceased and the complainant to A1 is a matter of evidence to be considered during trial. Even the source of Rs. 1 lakh 20 thousand might have to be explained by the accused. [Para 8][522-F-H; 523-A-B]

1.2 During the course of the investigation, the investigating officer has collected very important evidence in the form of call

D details between A1 & A2 which are in the proximity of the time of commission of offence and even thereafter. Therefore, in the facts and circumstances of the case, when respondent no.1 has been chargesheeted for the offences under Sections 420, 302 r/w 109 IPC and when there is ample material to show at least a *prima facie* case against respondent no.1-A2, the High Court has committed a grave error in quashing the chargesheet/entire criminal proceedings qua her in exercise of powers under Section 482 Cr.P.C. Quashing the chargesheet against the accused is not justified. The High Court evidently ignored what has emerged during the course of investigation. The High Court entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not, which as such is not permissible at all at this stage while considering the application under Section 482 Cr.P.C. The High Court was not as such conducting the trial and/or was not exercising the jurisdiction as an appellate court against the order of conviction or acquittal. Therefore, in the facts and circumstances of the case, the High Court ought not to have quashed the chargesheet qua respondent no.1- original accused no.2. The judgment and order passed by the High Court quashing the chargesheet/criminal proceedings for the offences under

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Sections 420, 302 r/w 109 IPC qua respondent no.1-accused no.2 A is quashed and set aside. [Para 9, 10][523-B-F-G]

State of Madhya Pradesh v. Deepak (2019) 13 SCC 62 : [2019] 2 SCR 1055 – relied on.

Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460 : [2012] 7 SCR 988; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198 : [2017] 2 SCR 491; Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605 : [2009] 13 SCR 230 – referred to.

<u>Case Law Reference</u>			C
[2019] 2 SCR 1055	relied on	Para 7.1	
[2012] 7 SCR 988	referred to	Para 7.1	
[2017] 2 SCR 491	referred to	Para 7.1	
[2009] 13 SCR 230	referred to	Para 7.1	D

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.873 of 2021.

From the Judgment and Order dated 25.08.2020 of the High Court of Judicature at Madras in Crl. O.P. No.1443 of 2020.

G. S. Mani, Ms. Khushboo Tomar, G. Ganesh Kumar, R. Sathish, Advs. for the Appellant.

S. Nagamuthu, Sr. Adv., M.P. Parthiban, A.S. Vairawan, R. Sudhakaran, Mrs. Shalini Mishra, T Hari Hara Sudhan, Vikas, Dr. Joseph Aristotle S., Ms. Preeti Singh, Ms. Ripul Swati Kumari, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.08.2020 passed by the High Court of Judicature at Madras in Criminal OP No. 1443 of 2020, by which the High Court in exercise of powers under Section 482 Cr.P.C. has quashed and set aside the entire criminal proceedings qua respondent no.1 herein – original accused no.2 (A2) in P.R.C. No.250 of 2019 on the file of the learned X

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A Metropolitan Magistrate, Egmore, Chennai, the original complainant – wife of the deceased – victim has preferred the present appeal.

2. That an FIR was lodged against respondent no.1 herein and one another on the statement of the appellant herein initially for the offences under Sections 326, 307, 302, 420, r/w 34 IPC. As per the

B statement and the allegations in the FIR, her husband was serving as Assistant Professor a year before. However, thereafter he was unemployed; that she had studied up to B.Com and looking after the domestic works; that since her husband was unemployed and it was difficult to maintain the family expenses, at that time, one Vela alias

C Velayutham was introduced by respondent no.1 herein and told them that the said Vela alias Velayutham is employed at Guindy Employment Exchange and that if they give money, he can arrange Government employment for them; it was further alleged that believing in his words they gave Rs. 4 lakhs to Velayutham about six months before; that on 23.09.2019 the said Velayutham promised that my husband will get the

D appointment order today itself and asked us to come to Vyasarpadi; that as asked by Velayutham, A1 in the aforesaid FIR, the complainant and her husband went to Flat No. 560, 8th Main Road behind Vyasarpadi Mullai Nagar Bus Depot at about 9:00 a.m. and met him; that A1 offered them 'Prasadam' from Shirdi Sai Baba Temple and to talk after our taking the Prasadam; that it was a powderlike Vibhuti in Shiva Temples;

E that since the powder was bitter in taste, she spitted it out, however, her husband had consumed it; that her husband fainted and fell down and that she was also feeling drowsy; that people nearby called 108 Ambulance and sent them to Stanley Hospital for treatment; that while she was on treatment she came to know that her husband died at the

F spot of the incident itself; that it was alleged that the powder given by Velayutham-A1 was the cause for her husband's death and her drowsiness; that the statement of the complainant was recorded at the hospital on 24.09.2019 which at the relevant time was treated as dying declaration. The relevant extract of the same is as under:

G "My name is Saranya I studied B.Com, I got married, my husband name is Karthick, I am having two sons, I am a house wife, my husband was professor and due to non-payment of salary, he started Xerox shop. One Bharathi regularly come to my husband's Xerox shop for Xeroxing. She said that she is working in secretariat, she said there is a job in employment office and for arranging the

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same Rs. 6 Lakhs may be given, we decided the job for my husband as advance during 7 month we paid 5 Lakhs. Daily when enquired the phone, the file has been moved, one week ago he said that he will give order copy and saibaba prasadam. We went to palani with family and returned on Monday at 7.30 hrs, Since, there is examination for our sons, I took my sons to school due to delay and spoken with the madam and left my sons in the school, my husband saw the missed call from velayutham three times, immediately my husband asked me to go home but I wanted to accompany him to Mullai Nagar. Previously I went to guindy office, velayutham asked as to come in the lane, green colour house is my house. He showed an order and given viboothi and kungumam and we kept it then he opened the box in the vehicle, he has given some powder from to me and my husband yellow colour cover in spoon, immediately velayutham took the mobile of her husband and went in two wheeler for taking Xerox copy of the order copy. My husband took the prasadam and felt something irritation and immediately took the water and spit the same, and also he give water to his wife with instruction to spit the content in her mouth, she also spit the content, my husband suffered fits and he closed his eyes, I do not know what had happened to me. When I wake up, I was in the hospital. Velayutham has given something to my husband and killed him, Bharathi is also the cause. Enquiry completed at 02.55 afternoon. The Patient conscious and able to speak till completing the declaration.”

2.1 That the dying declaration was recorded by the Magistrate in the presence of Doctor who certified that the patient was conscious and able to speak; that it was the specific case on behalf of the appellant-complainant that it was the respondent no.1 herein – original accused no.2 who introduced Vela @ Velayutham – A1 to them and she said that she is working in the Secretariat and that there is a job in the employment office and for arranging the same, Rs. 6 lakhs may be given and relying upon her statement Rs. 5 lakhs was given; that thereafter after the investigation the investigating officer filed the chargesheet against Vela @ Velayutham – A1 for the offences under Sections 326, 307, 302, 420 r/w 34 IPC and against respondent no.1 herein – A2 for the offences under Sections 420, 302 r/w Section 109 IPC; that the case was pending for committal before the learned X Metropolitan Magistrate, Egmore, Chennai; that at this stage respondent No.1 herein – A2 approached the

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- A High Court by way of Criminal O.P. No. 1443 of 2020 under Section 482 Cr.P.C praying for quashing the entire chargesheet as against her, pending committal in P.R.C. No. 250 of 2019 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai; that by the impugned judgment and order, the High Court in exercise of powers under Section 482 Cr.P.C. has quashed and set aside the entire chargesheet and the criminal proceedings qua respondent no.1 herein-A2 in P.R.C. No. 250 of 2019 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai for the offences under Sections 420, 302 r/w 109 IPC.
- B 3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court quashing and setting aside the entire criminal proceedings/chargesheet qua respondent no.1 herein-A2 in P.R.C. No. 250 of 2019 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai for the offences under Sections 420, 302 r/w 109 IPC, the original complainant – victim – wife of the deceased has preferred the present appeal.
- C 4. Shri G.S. Mani, learned Advocate has appeared for the appellant, Shri S. Nagamuthu, learned Senior Advocate has appeared on behalf of respondent no.1 herein – original accused no.2 and Shri (Dr.) Joseph Aristotle S, learned Advocate has appeared on behalf of the respondent – State of Tamil Nadu.
- D 4.1 Shri Mani, learned Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside the entire criminal proceedings qua respondent no.1 herein for the offences under Sections 420, 302 r/w 109 IPC, in exercise of powers under Section 482 Cr.P.C.
- E 4.2 It is submitted that despite the fact that there is ample material against respondent no.1 herein – original accused no.2, the High Court has quashed the entire criminal proceedings/chargesheet by entering into the merits of the allegations and appreciating the evidence on record,
- F G which at this stage and while considering the application under Section 482 Cr.P.C. is not permissible.
- H 4.3 It is submitted that the High Court has not properly appreciated the fact that as such it was respondent no.1 herein – original accused no.2 who assured and/or given promise that she will arrange for the job and for that she demanded the money.

4.4 It is submitted that as such respondent no.1 herein – original accused no.2 introduced Vela @ Velayutham – A1 to the complainant and her husband and an amount of Rs. 5 lakhs were given to A1. It is submitted that the High Court has not properly appreciated the fact that as such there was confessional statement of respondent no.1 herein – A2 and on the basis of the said confessional statement, there was a recovery of Rs. 1 lakh 20 thousand from the house of respondent no.1 herein – original accused no.2.

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4.5 It is further submitted that during the course of the investigation, the investigating officer also collected the evidence in the form of call details, more particularly the calls between A1 & A2 in the proximity of the time of commission of offence.

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4.6 It is submitted that despite the above material collected and the circumstances, the High Court has erroneously quashed the chargesheet/entire criminal proceedings qua respondent no.1 herein – original accused no.2, in exercise of powers under Section 482 Cr.P.C.

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4.7 It is submitted that while quashing the chargesheet/entire criminal proceedings, the High Court has evidently ignored what has emerged during the course of investigation. The High Court has not at all applied the relevant test, namely, when there is sufficient ground for proceeding against the accused or whether there is ground for presuming that accused has committed the offence. It is submitted that the High Court has exceeded in its jurisdiction to quash the chargesheet/entire criminal proceedings in exercise of powers under Section 482 Cr.P.C. Heavy reliance is placed on the decision of this Court in the case of *State of Madhya Pradesh v. Deepak*, reported in (2019) 13 SCC 62.

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4.8 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court quashing and setting aside the chargesheet/entire criminal proceedings qua respondent no.1 herein – original accused no.2 for the offences under Sections 420, 302 r/w 109 IPC.

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5. Dr. Joseph Aristotle S, learned Advocate appearing on behalf of the State of Tamil Nadu has supported the appellant. Reliance is placed on the counter affidavit filed on behalf of respondent no.2 – State of Tamil Nadu.

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A 5.1 It is vehemently submitted that as such during the course of the investigation, the investigating officer collected ample material/evidence against both the accused and only thereafter chargesheet has been filed against A1 for the offences under Sections 326, 307, 302, 420, r/w 34 IPC and for the offences under Sections 420, 302 r/w 109 IPC against respondent no.1 herein – original accused no.2.

B 5.2 It is vehemently submitted that during the course of the investigation, the investigating officer has collected the call details between A1 and A2. It is submitted that perusal of the call details report furnished by the service provider and the nodal officer clearly proves that there were several calls made by both A1 and A2, vice versa, for example on 23.09.2019 (the day when the incident had occurred) at about 09:05:26, respondent no.1 herein – A2 made a call to A1 on his mobile No. 9790846016 from her mobile No. 6382028209 and again A1 had made a call to A2 – respondent no.1 herein on the same day at about 09:51:59 and 09:55:15. It is submitted that it clearly shows that at that time A1 was available at the place of the incident and for second call also tower location showed the same place. It is submitted that again on the same day from mobile No. 9790846016, A1 made a call to A2 on her mobile no. 6382028209 at about 6:36 p.m. It is submitted that therefore it is clearly established that the said Mrs. Bharathi, respondent no.1 herein – A2 aided and instigated the offence committed by A1.

C 5.3 It is further submitted that there was a recovery of Rs. 1 lakh 20 thousand from the house of A2 at the instance of A2. It is submitted therefore that the High Court has exceeded in its jurisdiction to quash the chargesheet/entire criminal proceedings qua respondent no.1 herein, while exercising the powers under Section 482 Cr.P.C.

F 6. Shri Nagamuthu, learned Senior Advocate appearing on behalf of respondent no.1 herein – A2 has submitted that in the facts and circumstances of the case and considering the material/evidence on record and having found that there is not even a *prima facie* evidence/material against respondent no.1 herein – A2, the High Court has rightly quashed the chargesheet/criminal proceedings qua respondent no.1 herein in exercise of powers under Section 482 Cr.P.C. It is submitted that as such and even considering the statement of the original complainant as it is and even considering the case of the prosecution as it is, it cannot be said that respondent no.1 herein – A2 has committed any offence under Sections 420, 302 r/w 109 IPC. It is submitted that from the statement

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of the original complainant – appellant, it can be gathered that the allegations against A2 is that she introduced A1 to them; that an amount of Rs.4/5 lakhs was paid to A1; that the allegations of giving poison and even purchasing of poison is against A1 only; that there is no evidence that at the time when A1 gave poison to the deceased, A2 – respondent no.1 herein was present.

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6.1 It is further submitted that the so-called confessional statement of A2 is not admissible in the evidence at all and therefore no reliance can be placed upon such alleged confessional statement, which has no evidentiary value.

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6.2 It is further submitted that even the so-called recovery of Rs. 1 lakh 20 thousand from the house of A2 cannot bring home the charge against A2 for the offences for which she has been chargesheeted. It is submitted that there is no evidence at all that it was the very money which was given to A1 by the complainant.

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6.3 It is submitted that even the so-called call details between A1 & A2 cannot be said to be a sufficient material/evidence against A2. Merely because A1 & A2 might have talked cannot be held against A2.

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6.4 It is further submitted that even the statement of the complainant recorded on 24.09.2019 recorded at the hospital cannot be treated as dying declaration as subsequently she survived. It is submitted that there is improvement in the case and subsequently she had come out with the case that she paid Rs. 5 lakhs, whereas as per the original case, an amount of Rs. 4 lakhs was given.

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6.5 It is submitted that as such there is no material/evidence at all against A2 for the offence under Section 109 IPC. It is submitted that no case of appellant attracting the offence under Section 109 IPC against respondent no.1 herein – A2 is made out. It is submitted that there is no ingredient available as against A2 to attract the offence under Section 109 IPC.

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6.6 It is submitted therefore that in the facts and circumstances of the case, the High Court has not committed any error in quashing and setting aside the chargesheet/criminal proceedings qua accused no.2 in exercise of powers under Section 482 Cr.P.C.

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6.7 Making the above submissions, it is prayed to dismiss the present appeal.

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A 7. We have heard the learned counsel for the respective parties at length.

Before considering the rival submissions of the parties, few decisions of this Court on the principles which the High Court must keep in mind while exercising the jurisdiction under Section 482 Cr.P.C./at the B stage of framing of the charge while considering the discharge application are required to be referred to and considered.

7.1 In the case of *Deepak (supra)*, to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, *Amit Kapoor v. Ramesh C Chander (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605*, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “**presuming**” that the accused had committed the offence. It is observed D and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to E appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.

8. In the present case, there is sufficient material on record raising F the strong suspicion against respondent no.1 herein – A2 also. It has been found that A2- respondent no.1 herein who was serving in the Secretariat and was in touch with the deceased and the complainant as she used to go to Xerox shop owned by the deceased and she introduced A1 to the complainant and the deceased. It is specifically alleged that she said that she can manage to get the job/employment for the deceased G but for that they have to pay. It is true that as per the case of the prosecution and even as per the statement of the complainant, an amount of Rs. 5 lakhs was paid to A1. However, during the course of the investigation, an amount of Rs. 1 lakh 20 thousand has been recovered from the house of respondent no.1 herein – A2 at the instance of A2 H herself. It may be true that the so-called confessional statement of

respondent no.1 herein is inadmissible in evidence. However, it is to be noted that on the basis of such statement, there was a recovery of Rs. 1 lakh 20 thousand from the house of A2 – respondent no.1 herein. The other aspect whether the recovered amount of Rs. 1 lakh 20 thousand was the same amount which was given by the deceased and the complainant to A1 is a matter of evidence to be considered during trial. Even the source of Rs. 1lakh 20 thousand might have to be explained by the accused.

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9. It also appears that during the course of the investigation, the investigating officer has collected very important evidence in the form of call details between A1 &A2 which are in the proximity of the time of commission of offence and even thereafter. Therefore, in the facts and circumstances of the case, when respondent no.1 herein has been chargesheeted for the offences under Sections 420, 302 r/w 109 IPC and as observed hereinabove when there is ample material to show at least a *prima facie* case against respondent no.1 herein – A2, the High Court has committed a grave error in quashing the chargesheet/entire criminal proceedings qua her in exercise of powers under Section 482 Cr.P.C. Quashing the chargesheet against the accused is not justified. The High Court has evidently ignored what has emerged during the course of investigation. The High Court has entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not, which as such is not permissible at all at this stage while considering the application under Section 482 Cr.P.C. The High Court was not as such conducting the trial and/or was not exercising the jurisdiction as an appellate court against the order of conviction or acquittal. Therefore, in the facts and circumstances of the case, the High Court ought not to have quashed the chargesheet qua respondent no.1 herein – original accused no.2.

10. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court quashing the chargesheet/criminal proceedings in P.R. C. No. 250 of 2019 on the file of the learned Metropolitan Magistrate, Egmore, Chennai for the offences under Sections 420, 302 r/w 109 IPC qua respondent no.1 herein – original accused no.2 deserves to be quashed and set aside and is accordingly quashed and set aside. Now the learned Magistrate to proceed further with the case, in accordance with law. It goes without saying that any observations made by this Court in the

A present order shall be confined to while considering the application under Section 482 Cr.P.C. and the trial in the aforesaid case shall proceed further on its own merits, in accordance with law on the basis of the evidence laid.

11. The appeal is allowed in the aforesaid terms.

Nidhi Jain

Appeal allowed.