



2024 INSC 1012

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. of 2024
(@ SLP (Crl.) No. 10736 of 2022)

Karan Talwar

...Appellant(s)

Versus

The State of Tamil Nadu

...Respondent(s)

J U D G M E N T

C.T. RAVIKUMAR, J.

Leave granted.

1. This appeal by Special Leave is directed against the order dated 14.09.2022 passed by the High Court of Madras in CRLRC No.1258 of 2022 filed against the order dated 26.07.2022 passed by the learned Additional District Judge-Special Court under Essential Commodities Act Cases, Coimbatore (for short, the “ADJ”) in CMP No.586 of 2020 under Section 227 of the Code of Criminal Procedure, 1973 (for short, the “Cr.P.C.”) to discharge him from CC No.43 of 2020. As per the order dated 26.07.2022 the application for discharge filed by the appellant viz., accused No.13, in

CC No.43 of 2020, was dismissed and as per the impugned order, the Revision Petition filed against the same was also dismissed.

2. The case of the prosecution in short is as follows: -

Accused No.1 owns 10 acres of coconut grove where he runs a resort in the name and style "Agrinest" (without approval from the Government). Accused No.2 manages the same along with others like accused Nos.3 and 15. Accused Nos.11 and 12 arranged for conducting a music fest in the said resort and also for supplying narcotic substances to the participants during the programme. Accused No.14 was brought from Russia to attract youngsters to the programme. Accused No.1 went to Kerala and purchased 200 grams of cannabis besides bringing drinks from other states from unknown persons and brought all such items to the resorts on 03.05.2019. In the night of 03.05.2019, a large group of youngsters from Tamil Nadu and Kerala thronged there to participate in the music programme. During the programme narcotic substances were given to Accused Nos.4, 6, 7, 9 & 13 and they consumed the same. Accused Nos.15, 8 and 10 also consumed the same and abetted commission of offences like supply of narcotics. In connection with the said incident, FIR No.129/2019 was

registered on 04.05.2019 and in the said FIR, the appellant was shown as accused No.13 and accused of commission of offence under Section 27(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the “NDPS Act”). After the investigation, a final report was filed against all the accused and as per the same, the appellant herein (accused No.13) was charge sheeted only for offence under Section 27(b) of the NDPS Act. This appeal is filed by accused No.13 against dismissal of his application for discharge. Hence, we are confining the consideration only qua accused No.13.

3. Heard the learned senior counsel appearing for the appellant and the learned counsel appearing for the State of Tamil Nadu.

4. As noted above, the appellant is charge sheeted only under Section 27(b) of the NDPS Act, though some of the other accused in the said crime are also charged for offences under certain other enactments.

5. Before dealing with the rival contentions, it is only appropriate to refer to the scope of exercise of power under Section 227, Cr.P.C. This Court in ***P. Vijayan v. State of Kerala & Anr.***¹, made an in-depth consideration

¹ (2010) 2 SCC 398; 2010 INSC 61

regarding the scope of power under Section 227, Cr.P.C.
and held thus: -

“10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:

“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.”

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words “not sufficient ground for

proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

6. While considering the scope of Section 227, Cr.P.C. in **Sajjan Kumar v. Central Bureau of Investigation**², this Court laid down certain guiding principles for discharge as under: -

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but

² (2010) 9 SCC 368; 2010 INSC 624

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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out

if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

7. The position of law enunciated in the said decisions would reveal that while calling upon to exercise the power under Section 227, Cr.P.C., the judge concerned has to consider only the record of the case and the documents produced along with the same. If on such consideration the court forms an opinion that there is no sufficient ground to proceed against the accused

concerned, he shall be discharged after recording the reasons therefor. It is also evident from the precedence on the aforesaid question that while exercising the said power, the Court could sift the materials produced along with the final report only for the purpose of considering the question whether there is ground to proceed against the accused concerned.

8. Bearing in mind the position(s) of law laid down as above in the matter of exercise of power under Section 227, Cr.P.C., we will consider the question whether the dismissal of the application for discharge filed by the appellant in CC No.43 of 2020 calls for interference in view of the nature of the charge framed against him and the materials on record to support the same.

9. As noted earlier, the accusation against the appellant is commission of offence punishable under Section 27(b) of the NDPS Act. The said Section, in so far as it is relevant, reads thus: -

“27. Punishment for consumption of any narcotic drug or psychotropic substance. — Whoever, consumes any narcotic drug or psychotropic substance shall be punishable, —

(a)

(b) where the narcotic drug or psychotropic substance consumed is other than those specified

in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.”

10. As is evident from the said Section, the alleged offence is consumption of narcotic drug or psychotropic substance other than those specified in or under clause (a) of Section 27, NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. The contention of the appellant is that he has been arraigned as accused No.13 based on the confession statement of co-accused viz., accused No.1. Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. This view has been fortified by the law laid down in **Suresh Budharmal Kalani v. State of Maharashtra**³, wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him. The materials on record would reveal that the investigating agency had

³ (1998) 7 SCC 337; 1998 INSC 364

not subjected him to medical examination and instead, going by complaint Witness No.23, he smelt the accused. The less said the better and we do not think it necessary to comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. There is absolutely no case that any recovery of contraband was recovered from the appellant. As regards the confession statement of the appellant in view of Section 25 of the Indian Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is worthy to refer to the decision of this Court in ***Ram Singh v. Central Bureau of Narcotics***⁴. In the said decision, this Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No.1 there is absolutely no material available on record against the appellant.

11. When this be the position, the question is whether the two Courts were justified in holding that there is *prima facie* case against the appellant to proceed against

⁴ (2011) 11 SCC 347; 2011 INSC 342

him. In this contextual situation, it is relevant to refer to the decision of this Court in ***Dipakbhai Jagadishchandra Patel v. State of Gujarat and Anr.***⁵ Paragraphs 23 and 24 of the said decision are relevant for the purpose of this case and they read thus: -

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be

⁵ (2019) 16 SCC 547; 2019 INSC 568

translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

24. Undoubtedly, this Court has in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275]. We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where

the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge.”

(underline supplied)

12. As noted hereinbefore, the sole material available against the appellant is the confession statement of the co-accused viz., accused No.1, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be said that a *prima facie* case is made out to make the appellant to stand the trial. There can be no doubt with respect to the position that standing the trial is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand the trial.

13. In the said circumstances and in view of the settled position of law stated and reiterated by this Court, the

impugned judgment is liable to be interfered with and the appeal is liable to be allowed.

14. Accordingly, the appeal is allowed and the impugned order dated 14.09.2022 passed by the High Court of Madras in CRLRC No.1258 of 2022 filed against the order dated 26.07.2022 passed by the ADJ in CMP No.586 of 2020 are quashed and set aside. As a necessary sequel, the appellant who is accused No.13 in CC No.43 of 2020 pending on the files of learned Additional District Judge-Special Court under Essential Commodities Act Cases, Coimbatore is discharged from the said case, by allowing the prayer of appellant for discharge.

15. Application(s), if any, stands disposed of, accordingly.

....., J.
(C.T. Ravikumar)

....., J.
(Rajesh Bindal)

**New Delhi;
December 19, 2024**