HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
HON'BLE MRS JUSTICE SUREPALLI NANDA

CRIMINAL APPEAL No.427 of 2024

Sri Pattabhi Vemulapati, learned Senior Counsel representing Sri Shaik Mohammed Rizwan Akhtar, learned counsel for the appellant.

Sri P.Vishnuvardhana Reddy, learned Special Public Prosecutor for NIA for the respondent - State.

JUDGMENT: (*Per Justice Moushumi Bhattacharya*)

The Criminal Appeal arises out of an order dated 26.03.2024 passed by the learned IV Additional Metropolitan Sessions Judge-cum-Special Court for NIA Cases, Nampally, Hyderabad in Crl.M.P.No.1895 of 2023.

2. By the impugned order, the Trial Court dismissed a petition filed by the appellant under section 227 of The Code of Criminal Procedure, 1973, ('Cr.P.C.') for discharging the appellant for the alleged offences under section 120B of The Indian Penal Code ('IPC'); sections 18, 20, 38 and 39 of The Unlawful Activities (Prevention) Act, 1967 ('the UAPA Act') and sections 4, 5 and 6 of The Explosives Substances, 1908 ('the 1908 Act').

Facts leading to the Impugned Order

3. The appellant herein - the petitioner before the Trial Court - was named as the Accused No.3 in a Chargesheet dated 29.03.2023. The appellant was arrested on 02.10.2022 and remanded in judicial custody.

4. The impugned order outlines the allegations against the appellant. The appellant was accused of conspiring to wage war against India by acts including meeting the other accused persons at Al-Marjaan Restaurant, Hyderabad, where the appellant allegedly received hand-grenades from the other accused persons. The Chargesheet alleged that the appellant planned to hurl the grenades at a public gathering during Dussehra following instructions from the Lashkar-e-Taiba ('LeT') operatives. Charges were framed against the appellant for conspiracy, committing terrorist acts, membership of terrorist gang and giving support to a terrorist organisation and possession of explosive substances. The appellant was charged under sections 120B of the IPC, sections 18, 20, 38 and 39 of the UAPA Act and sections 4, 5 and 6 of the 1908 Act. The appellant sought discharge under section 227 of the Cr.P.C. primarily on the ground that the Prosecution was not able to make out a case against the appellant. The learned Trial Court dismissed the petition on the premise that the investigation material, *prima facie*, reveals involvement of the appellant.

Submissions of the Parties

5. Learned Senior Counsel appearing for the appellant places emphasis on the requirement of dealing with each individual charge under section 227 of the Cr.P.C. and that the Trial Court has a statutory obligation to consider the records of the case and documents submitted before it. Counsel makes extensive arguments on the scope of Section 227 of the Cr.P.C. including on the necessity of considering whether the offences mentioned in the Chargesheet have been sufficiently made out. The Court cannot be expected to accept the statements of the Prosecution as gospel truth even if it is opposed to common sense or the broad probabilities of the case: *Niranjan Singh karam Singh Punjabi Vs. Jitendra B Bijjaya*[1].

6. The learned Special Public Prosecutor for the National Investigation Agency (NIA) submits that an FIR dated 01.10.2022 was lodged against the appellant/accused No.3 and others and investigation was handed over to the Special Investigation Team. Counsel relies on the confession of the accused No.1 and the disclosures made by the accused No.2 to submit that the appellant has been a part of the conspiracy hatched by LeT operatives to cause loss of life and property. Counsel relies on the evidence of involvement of the appellant to urge

[1] (1990) 4 SCC 76

that the appellant was correctly charged under the Acts mentioned in the Chargesheet.

Decision

7. We have heard learned Senior counsel appearing for the appellant and the learned Special Public Prosecutor for the respondent – NIA. We have carefully considered the material on record. We propose to first place Section 227 of the Cr.P.C. within the statutory framework in terms of its object and mandate. Our findings on the impugned order will follow in the later part of the judgment.

Section 227 in the statutory framework of The Code of Criminal Procedure, 1973

8. Sections 227, 239 and 0245 and of The Code of Criminal Procedure, 1973 provide for discharge of an accused before commencement of trial. The Cr.P.C. contemplates discharge of the accused at 3 different stages of the proceedings. Section 227 of the Cr.P.C. contemplates discharge in a case triable before a Court of Session; Section 239 contemplates discharge on cases instituted upon considering police report and section 245 contemplates cases instituted otherwise than on a police report. The aforesaid provisions contain minute differences with regard to discharge of the accused. While the trial Judge under Section 227 is required to discharge the accused if the

Judge considers that there is no sufficient ground for proceeding against the accused, Section 239 contemplates the obligation to discharge the accused when the Magistrate considers the charge against the accused to be groundless. The power to discharge under Section 245(1) arises where the Magistrate considers that no case has been made out against the accused which, if un-rebutted, would warrant conviction of the accused. The Magistrate must record his reasons for passing the order.

9. Chapter XVIII of the Cr.P.C deals with Trial before a Court of Session. The first section under Chapter XVIII i.e., Section 225 mandates that the Public Prosecutor shall conduct the prosecution in every trial before the Court of Session. Section 226 requires the Prosecutor to open his case when the accused appears before the Court in pursuance of a case under Section 209, by describing the charge brought against the accused and stating the evidence the Prosecutor proposes to rely on for proving the guilt of the accused.

10. The word "Charge" was described by the Supreme Court in *Vishnu Kumar Shukla Vs. State of Uttar Pradesh*[2] to mean the precise offence which the accused is called upon to meet; the object being to warn the accused of the case against him. *Vishnu Kumar Shukla* relied on *Minakshi Bala Vs. Sudhir Kumar*[3] with regard to of the duty of the

[2] 2023 SCC OnLine SC 152
[3] (1994) 4 SCC 142

Magistrate to discharge the accused under section 239 of the Cr.P.C. if the Charge is found to be groundless, and conversely, frame a Charge in terms of section 240 of the Cr.P.C. if the Magistrate finds that there is a presumption that the accused has committed an offence which is triable by the Magistrate. The singular word i.e., "Charge" would include the plural i.e., "Charges" on the contextual requirement. In any event Section 13(2) of The General Clauses Act, 1897 provides that words in singular shall include plural and *vice-versa*.

11. As stated above, Section 226 of the Cr.P.C. requires the Prosecutor to open his case as to the Charge and the evidence which the Prosecutor proposes to rely on to prove the guilt of the accused and describe the Charge against the accused.

12. Section 227 of the Cr.P.C. comes into play once the Prosecutor has played his role under section 226 of the Cr.P.C. Section 227 requires the Court of Session to consider the record of the case, the documents submitted along with the case and to hear the submissions of the accused and the Prosecution in relation to the record/ documents. The Judge shall then consider whether sufficient ground has been made out for proceeding against the accused. The accused shall be discharged if the Court is satisfied of this count by an order recording the reasons for the discharge.

13. Section 227 is part of the legislative effort to cut out frivolous prosecution and to prevent the accused being tried of an offence which is not corroborated by evidence. The salutary object of Section 227 is to expedite disposal of criminal cases. The Judge has to come to a clear finding by application of his/her judicial mind to the facts of the case for determining whether the Prosecution has made out a case for trial: *Union of India Vs. Prafulla Kumar Samal*[4] relying on *State of Bihar Vs. Ramesh Singh*[5].

14. The principles enunciated in *Prafulla Kumar Samal* (supra) were reiterated by the Supreme Court in *Sheoraj Singh Ahlawat Vs. State of Uttar Pradesh*[6]. Justice S.Murtaza Fazal Ali, speaking for the Bench, summed up the principles in paragraph 10 of the Report. The principles enunciated emphasise that the Judge has the power to sift and weigh the evidence for the limited purpose of finding out whether a *prima facie* case has been made out against the accused. The test of identifying a *prima facie* case would depend on the facts of each case and whether the evidence gives rise to some suspicion (if not grave suspicion) against the accused. In the former case, the Judge will fully be within his/her right to discharge the accused. An application under Section 227 should not be rejected in a summary manner but after undertaking analysis of the

[4] (1979) 3 Supreme Court Cases 4
[5] (1977) 4 SCC 39
[6] (2013) 11 Supreme Court Cases 476

factual material to a finding whether an offence has been made out for a proceeding : *Pradeep Kumar Vs. State of Bihar*[7].

Section 227 of the Cr.P.C requires independent application of judicial mind:

15. The consensus of the Courts on the above aspect would be evident from a procession of decisions on Section 227 of the Cr.P.C. Section 227 is set out below:

> "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"

16. The very words of the section pre-suppose a consideration of the record of the case which requires the Court to sift and weigh the evidence. The Court is also required to hear the accused and the prosecution on the evidence and conclude if there is sufficient ground for framing charges against the accused or whether the evidence calls for discharge the accused : *Prafulla Kumar Samal* (supra). *Ramesh Singh* held that a strong suspicion or presumption of the guilt of the accused drawn at the initial stage is sufficient for framing of charge. *Ramesh Singh* went on to hold that strong suspicion, which cannot replace proof

[7] (2007) 7 Supreme Court Cases 413

at the trial stage, may be sufficient for the satisfaction of the Sessions Judge for framing charges against the accused.

17. The Supreme Court in *K.P.Raghavan v. M.H.Abbas*[8] observed that a Magistrate enquiring into a case under section 209 of the erstwhile Code of Criminal Procedure, 1898 - which is equivalent to 227 of the present Code - is not to act as a mere Post Office and has to come to the conclusion whether the case before him/her is fit for commitment of the accused to the Court of Session. A similar view was taken by the Supreme Court in *Almohan Das v. State of West Bengal*[9] to the effect that a Magistrate holding an enquiry is not intended merely to act as a recording machine but is entitled to carefully consider the material on record for the purpose of seeing whether there is sufficient evidence for commitment as opposed to determining whether there is sufficient evidence for conviction. The Supreme Court went on to hold that the Magistrate has a duty to discharge the accused if there is no *prima facie* evidence or if the evidence is totally unworthy of credit. On the other hand, the Magistrate must commit the case if there is some evidence on which a conviction may reasonably be based. In *Vishnu Kumar Shukla* (supra), the Supreme Court reiterated the dictum in *Niranjan Singh Karam Singh Punjabi* (supra) that the Court cannot accept all that the prosecution states as gospel truth where it is opposed to common sense

[8] AIR 1967 SC 740
[9] AIR 1970 SC 863

or the broad probabilities of the case. *Vishnu Kumar Shukla* (supra) also relied on *Dilipsinh Kishorsinh Rao* (supra) to reiterate that there must be application of judicial mind to determine whether a case has been made out by the prosecution for proceeding with trial.

18. In the more recent case of *State of Tamil Nadu v. R.Soundirarasu*[10], the Supreme Court held that the test of *prima facie* case has to be applied for the satisfaction of the Trial Court that a case has been made out for framing of charges. The Supreme Court further held that the documents must be given due weightage together with the submission made by the accused and the prosecution together with the police report.

19. The scope of section 227 of the Cr.P.C., as explained by the above decisions, makes it evident that the Court of Session must exercise its independent judicial mind for coming to the conclusion that the accused should either be discharged or committed for trial.

Section 227 of the Cr.P.C mandates a Reasoned Order:

20. As stated in the earlier part of the judgment, the provisions in the Cr.P.C. for discharge of an accused i.e., under Sections 227, 239 and 245 stipulate the recording of reasons for discharge.

---

[10] (2023) 6 SCC 768

21. Apart from the express statutory mandate to record reasons, natural justice demands that any order which has the potential of affecting individual liberty or impacting fundamental freedoms, must be informed by reasons. Reasons are the only reflection of exercise of the judicial mind. The legislative prescription in Section 227 for recording of reasons for discharge of an accused is a *sine qua non* for the order passed by the Court of Session.

Does the impugned order cross the Threshold Test of Section 227 of the Cr.P.C?

22. The impugned order can be divided into the following segments:

i. Paragraph 1 describes the nature of the proceeding.
ii. Paragraph 2 outlines the averments of the petitioner/ accused No.3 (appellant before this Court).
iii. Paragraph 3 sets out the objection of the Public Prosecutor.
iv. Paragraph 5 records the point for consideration i.e., whether the petitioner is entitled to relief as prayed for ?
v. Paragraphs 7 and 8 reiterate the contention of the petitioner while paragraphs 9 and 10 reiterate those of the respondent/NIA.
vi. The operative part of the impugned order starts from paragraph 11 where the Special Court provided a discussion and analysis of the material before it.
vii. Paragraph 13 discusses the contents of the charge sheet and the evidence filed against the petitioner. Paragraph 13 also

shows that the evidence was divided into "Oral Evidence", "Material Evidence" and "Technical Evidence".

viii. Paragraph 14 states the circumstances leading to the NIA to initiate investigation against the petitioner and file charge sheet based on the collective oral and documentary evidence. Paragraph 14 also discusses the individual sections under The Indian Penal Code, 1860, The Unlawful Activities (Prevention) Act, 1967 and The Explosive Substances Act, 1908 and the legal effect of the individual sections of these Acts.

ix. Paragraph 16 discusses the decisions cited on behalf of the petitioner.

x. Paragraphs 18 and 19 consider the overall evidence collected by the investigation and its effect, *prima facie,* on the involvement of the petitioner.

xi. The Special Court concludes in paragraphs 19 and 21 that evidence leads to a *prima facie* case against the petitioner and sufficient ground to proceed against the petitioner.

xii. The petition under section 227 of the Cr.P.C. was dismissed by the Special Court in paragraph 22.

A careful reading of the impugned order makes it clear that the impugned order is replete with reasons. The Special Court has given reasons not only in referring to the contents of the Charge Sheet in detail but also to the evidence on record grouped into "Oral", "Material" and "Technical" evidence stating the role of the appellant/accused No.3 in the alleged criminal conspiracy hatched by other accused persons who were

traced to a Pakistan-based Terrorist Organization. The Special Court has stated the facts in detail including those leading to the appellant's arrest by the State Police on 02.10.2022 and seizure of a hand grenade from the appellant's possession. The Special Court has also narrated the factual findings from the investigation against the appellant, namely, that the appellant was part of a criminal conspiracy for causing bomb blasts in Hyderabad. The Special Court also referred to the facts revealed from the investigation that the appellant joined the LeT in Hyderabad for carrying out terrorist attacks during Dussehra and took a hand grenade from the accused No.1 for that purpose.

23. The involvement of the appellant, as recorded in the impugned order, can further be gleaned from the "Oral Evidence" as given by two of the protected witnesses. The material evidence of seizure of one hand-grenade from the appellant containing RDX (a highly explosive substance) and more important, the technical evidence of a CCTV Footage on 29.09.2022 at Al Marjaan Restaurant, Saidabad, Hyderabad, show that the appellant met the two other accused persons. The impugned order also states that the NIA filed the Charge Sheet after investigation based on the collective oral and documentary evidence of the appellant conspiring with other accused persons and being a part of the criminal conspiracy hatched by the LeT-operatives based in Pakistan.

24. This Court is unable to accept the contention made on behalf of the appellant that the impugned order is opaque and fails to disclose reasons in view of the facts and evidentiary particulars stated in the impugned order.

The Impugned Order is a Reasoned Order

25. The requirement of giving reasons is not measurable in terms of quantum or quality. The articulation of reasons varies with the factual complexity of the case, the law governing the field and the expression of the Judge. There cannot be any hard-and-fast rule on the benchmark as to when an order falls short of the test. The only acceptable criterion is whether the decision reflects an application of mind on the facts and law before the Court. An order bereft of reasons will be different, on the face of it, from an order which contains even a solitary line as to the basis of the finding/conclusion arrived at by the Court.

26. In the impugned order at hand, there is no doubt that the Special Court arrived at the *prima facie* view of the appellant's involvement in the alleged conspiracy upon due consideration of the material evidence before it. There is also no doubt that the appellant was given an opportunity of hearing before dismissal of the petition.

27. Our view on the correctness of the impugned order is buttressed by the settled position that the Court should come to a conclusion that there is a probability of commission of the offence and accordingly, a case has been made out for framing of the charge. The conclusion must be based on the material on record.

28. It is settled law that the Court has only to consider, *prima facie,* whether sufficient ground has been made out for proceeding against the appellant at the stage of framing of charge. The Court is not required to appreciate evidence in detail for concluding whether the material produced is sufficient for convicting the accused: *State of Maharashtra v. Som Nath Thapa*[11] and *State of M.P. v. Mohanlal Soni*[12]. Simply put, the stage of framing of charge is a preliminary one and the Court must apply the test of a *prima facie* case. If the Trial Court is satisfied that a *prima facie* case is made out, charge has to be framed: *Soundirarasu* (supra).

29. To clarify once again, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. The Court is not expected to delve deep into the probative value of the material on record: *Onkar Nath Mishra v. State (NCT of Delhi)*[13]. The principles formulated by the Supreme Court in *Prafulla Kumar Samal* (supra) and reiterated in *Sheoraj Singh (supra)* also point to the direction

[11] (1996) 4 SCC 659
[12] (2000) 6 SCC 338
[13] (2008) 2 SCC 561

that a *prima facie* case would have to be made out depending on the facts of each case. The principles further enunciate that the Court would fully be justified in framing a charge and proceeding with the trial where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained. *Ramesh Singh* (supra) placed emphasis on "a strong suspicion" and a presumption that the accused has committed an offence. The "Post Office" and "Recording Machine" descriptions of the Court in *K. P. Raghavan* (supra) and *Almohan Das* (supra) in a discharge proceeding may be fit adjectives where there is a palpable failure on the part of the Judge to exercise discretion on the material available before the Court.

Conclusion

30. The impugned order which forms the subject matter of the present Criminal Appeal does not fall in that category of cases. It cannot be said that the Special Court has either acted as a mouthpiece of the Prosecution or mechanically accepted the contentions of the Prosecution in dismissing the Discharge Petition. The reasons for forming the *prima facie* view are writ large in the body of the impugned order. Although this Court is not inclined to delve into the factual details recorded in the impugned order for the simple reason that charges are yet to be framed, the evidence brought by the Prosecution including the CCTV footage of the petitioner in the company of the other accused and the recovery of a

hand-grenade from the appellant's possession constitutes sufficient basis for formation of the *prima facie* view for framing of charges.

31. The decisions cited on behalf of the appellant proceed on the primary requirement of exercise of judicial mind and the need to consider the material placed before the Court for determining a *prima facie* case. The caution sounded against accepting the version of the prosecution as the gospel truth is a natural corollary to the mandate of an independent exercise of judicial mind. The decisions reinforce the necessity of the evidence giving "rise to some suspicion" if not grave suspicion (*Prafulla Kumar Samal (supra)).* There is no doubt that the evidence brought before the Special Court in this case was sufficient to give rise to a reasonable suspicion of the involvement of the appellant and is certainly not a case where the appellant was able to rebut the evidence by showing that there was no case against the appellant at all.

32. The above reasons persuade this Court to disallow the prayer for remand made on behalf of the appellant. We have not noticed any discernible or obvious failing on the part of the Trial Court either in terms of the application under section 227 of the Cr.P.C. or on account of absence of reasons or otherwise, for sending the matter back for a fresh consideration. Framing of charges is not the end of the matter and the

appellant will have every opportunity to defend the charges at a later stage of the proceedings.

33. The above discussion persuades us to hold that the impugned order dated 26.03.2024 does not warrant interference.

34. Criminal Appeal No.427 of 2024 is accordingly dismissed. All connected applications are disposed of.

MOUSHUMI BHATTACHARYA, J

SUREPALLI NANDA, J

Date: 23.12.2024
Note: LR Copy to be marked
(B/o. *VA/BMS*)