

Criminal Revision  
Present: The Hon'ble Justice Ashim Kumar Roy  
Judgment On : 05-05-2010.  
*C.R.R. NO. 1117 of 2008*  
*Sri Hemanta Mondal & Ors.*  
*versus*  
*The State & Anr.*

Points:

**Quashing:** At the stage of quashing whether court is required to examine and assess in detail the materials on record -Code of Criminal Procedure, 1973 S.482

Facts:

The petitioners have approached for quashing of the charge-sheet submitted against them under Sections 498A/306/406/34 of the Indian Penal Code on the ground, the evidentiary materials collected by the police during the investigation no offence has been made out and on the further ground admittedly, the FIR was lodged by mistake of facts. There is no materials justifying submission of the charge-sheet for the alleged offences punishable under Sections 498A/306 of the Indian Penal Code, when according to the Autopsy Surgeon, the death was accidental in nature. The defacto-complainant by filing an affidavit submitted before this Court that he is no more desirous to proceed with the criminal case instituted at his behest the impugned charge-sheet is liable to be quashed.

Held:

At the stage when an accused has approached the High Court for quashing of the charge-sheet it is not for this Court to examine and assess in detail the materials on record and on which the prosecution proposes to rely to establish the charge against the accused nor it is for the Court to consider the sufficiency of the materials. The only thing the Court is to see whether there are prima facie materials or not and unless there exists very strong reasons no charge-sheet shall be quashed without trial.

Para 5

Moreover, the opinion expressed by the post mortem doctor in his report, by itself cannot be a ground to hold that no case for an offence under Section 306 of the Indian Penal Code has been made out against the accused when there are other overwhelming materials on record for presuming the accused has committed offence for which charge-sheet has been submitted. It is well settled the Court is not bound to accept the testimony of an expert in every case unless the same is supported by reason. Para 5

Cases Cited:

Mohd. Zahid Vs. State of Tamil Nadu, reported in 1999 SCC (Cri) 1066.

Haji Mohammad Ekramul Haq Vs. The State of West Bengal, reported in AIR 1959 SC 488.

State of Delhi Vs. Gyan Devi & Ors., reported in 2000 SCC (Cri) 1486 in paragraph 10

For Petitioners : Mr. Anil Kumar Chattopadhyay

For State : Mr. Debabrata Roy

For O.P. No. 2 : Mr. Himangshu De

Mr. Suman De

The Court:

Invoking inherent jurisdiction of this Court the petitioners have approached for quashing of the charge-sheet submitted against them under Sections 498A/306/406/34 of the Indian Penal Code on the ground, the

evidentiary materials collected by the police during the investigation no offence has been made out and on the further ground admittedly, the FIR was lodged by mistake of facts.

It may be noted that initially the petitioner moved for quashing of the FIR and thereafter by filing a supplementary affidavit made the prayer for quashing of the charge-sheet which was submitted in the meantime.

2. Mr. Anil Chattopadhyay, the learned advocate appearing on behalf of the petitioners vehemently urged before this Court there is no materials justifying submission of the charge-sheet for the alleged offences punishable under Sections 498A/306 of the Indian Penal Code, when according to the Autopsy Surgeon, the death was accidental in nature. He further submitted in view of the fact the defacto-complainant by filing an affidavit submitted before this Court that he is no more desirous to proceed with the criminal case instituted at his behest the impugned charge-sheet is liable to be quashed. On the other hand, Mr. Debobrata Roy, the Learned Counsel for the State produced the Case Diary and vehemently opposed the prayer for quashing. He submitted there are gallon of evidence to show that during her lifetime she was regularly subjected to cruelty by the accused persons because she objected against her husband for maintaining an extra-marital affairs with his sister-in-law. She further submitted soon before her death she was physically assaulted by the accused persons as she protested against her husband's relations with his sister-in-law. Mr. Roy draws the attention of the Court to the 161 statement of the witnesses, who are happened to be the neighbouring people as well as the tenants in the said house. He further submitted that the opinion of the doctor is not conclusive and is subject to the judicial scrutiny.

3. It may further be noted that the defacto-complainant of the case also

appeared before this Court being represented by his Learned Lawyer and by filing

an affidavit supporting the stand of the accused/petitioner and consented for quashing of the impugned proceedings. In his affidavit it has been inter alia contended as follows;

(a) The FIR was lodged by him at the instance of the local people and without going through the content of the FIR, as he was mentally disbalanced, due to the loss of his sister, he put his signature.

(b) It appears from the Post Mortem Report the death was accidental.

(c) The Investigating Officer perfunctorily investigated the case.

(d) Nothing would be happened in the trial as the defactocomplainant is not supporting the imputation made in the complaint.

(e) The ultimate chance of conviction is very bleak, therefore no useful purpose will likely to be served by allowing this criminal prosecution to continue.

(f) The defacto-complainant is the only son of the family and he is not in a position to file any claim case for his sister's accidental death against the

Railway Authority due to the pendency of this criminal case.

4. Heard Mr. Anil Kumar Chattopadhyay, the learned advocate appearing on behalf of the petitioner, Mr. Debobrata Roy appearing for the State

and Mr. Himangshu De appearing for the defacto-complainant. Perused the Case

5. At the stage when an accused has approached the High Court for quashing of the charge-sheet it is not for this Court to examine and assess in detail the materials on record and on which the prosecution proposes to rely to

establish the charge against the accused nor it is for the Court to consider the sufficiency of the materials. The only thing the Court is to see whether there are

prima facie materials or not and unless there exists very strong reasons no charge-sheet shall be quashed without trial. In the present case having gone through the Case Diary I find the police has recorded the statement of the several

neighbouring persons of the accused as well as their tenants. According to the

statement of those witnesses the accused/husband Hemanta Mondal had an

extra-marital affairs with his sister-in-law Kajal Mondal and the deceased was regularly tortured both physically and mentally by those accused persons. I further find on the previous evening as well as on the date of the incident in the morning, the victim Mitali was assaulted by the accused persons and at noon she committed suicide. She was subjected to torture by the accused persons as she was always protesting against the extra-marital affairs between her husband and her elder sister-in-law. It is true according to the Post Mortem Report the doctor opined the cause of death was accidental. It is well settled that sufficient weightage to be given to the evidence of the doctor conducting post mortem but that does not ipso facto mean that each and every statement made by a medical statement should be accepted on its face value. In this regard, reliance may be placed in the decision of the Hon'ble Supreme Court in the case of Mohd. Zahid Vs. State of Tamil Nadu, reported in 1999 SCC (Cri) 1066. Moreover, the opinion expressed by the post mortem doctor in his report, by itself cannot be a ground to hold that no case for an offence under Section 306 of the Indian Penal Code has been made out against the accused when there are other overwhelming materials on record for presuming the accused has committed offence for which charge-sheet has been submitted. It is well settled the Court is not bound to accept the testimony of an expert in every case unless the same is supported by reason. In this regard reliance may be placed in the decision of the Hon'ble Supreme Court in the case of Haji Mohammad Ekramul Haq Vs. The State of West Bengal, reported in AIR 1959 SC 488.

6. In the case of State of Delhi Vs. Gyan Devi & Ors., reported in 2000 SCC (Cri) 1486 in paragraph 10 the Apex Court amongst other observed as

follows;

“...The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the question whether the charge under Sections 304/34 IPC framed against the accused-Respondents 1 and 2 was likely to succeed or not. This question was to be considered by the trial Judge after recording the entire evidence in the case. It was not for the High Court to prejudge the case at the stage when only a few witnesses (doctors) had been examined by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the case make it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Section 482 CrPC is warranted in the interest of justice. On consideration of the matter we have no hesitation to hold that the order under challenge is vitiated on account of erroneous approach of the High Court and it is clearly unsustainable.” (para 10)

7. In view of above, I am of the opinion, this is not a fit case for quashing of the charge-sheet.

8. Now, having regards to the affidavit filed in Court in course of hearing of this criminal revision by the defacto-complainant of the case where it

has been clearly averred on oath, that the FIR was lodged by him at the instance

of the local people and he signed on the complaint without knowing what was

written therein and further averment to the effect that because of the pendency of

the criminal case he being the only son of the family is not in a position to file

any claim case before the Railway Authority, I find the FIR was written by one of

the friend of the defacto-complainant as he having some pain in his right hand. I

further find that the said FIR contained each minute details of incident which

took place during the married life of his sister and the circumstances leading to her death. In view of above, I am unable to accept the contention of the defactocomplainant, the opposite party no. 2 herein that without knowing the content of the said FIR he put his signature thereon. In the affidavit there is further averment that the defacto-complainant could not file any claim case against the Railway Authority for the accidental death of her sister because of the pendency of the impugned criminal proceedings. I am of the opinion that this affidavit in question has been filed by the defacto-complainant/the opposite party no. 2 herein with the intention to screen the offender from the legal punishment and also to sustain his claim before the Railway Authority on the plea she died due to a railway accident. Even assuming what have been contended in the affidavit in question is correct then in that case also the defacto-complainant shall incur a prima facie liability for fabricating false evidence for the purpose of being used the same in a judicial proceeding as well as for giving false evidence in respect of an offence and for causing to be instituted a criminal proceeding against any person on a false charge. The Investigating Agency shall have the liberty to proceed against the defacto-complainant in accordance with law. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

( Ashim Kumar Roy, J. )