

SESSIONS CASE NO.38 OF 2009 & OTHERS**Order below Exh.677.**

Heard Learned advocate Mr.I.M.Munshi for the accused No.65, 66 and 67 and Learned Special P.P. Mr.H.M.Dhruv for the State.

1. The present application has been tendered by the accused for the direction to the Learned Special P.P. that he should make submission under Section 226 of Cr.P.C. for each of the 35 cases in which the accused have been arraigned.

It is endorsed by Learned Special P.P. on the application that he has already complied with Section 226 of the Cr.P.C. and has made necessary arguments.

2. This application has a background which needs a mention. Vide Exh.384, Learned advocate Mr.I.M.Munshi has tendered an application for compliance of Section 226 of Cr.P.C. for Sessions Case No.162/10. At that point of time, Learned Special P.P. Mr.Dhruv has made a statement that he has no objection in complying with Section 226 of Cr.P.C.

L.A. Mr.Munshi has argued in the tune of contents of the application and has urged to grant the application.

3. Today, the matter has been kept for opening up of the case by the prosecution as required under Section 226 of Cr.P.C.

4. Learned Special P.P. Mr.Dhruv has addressed this Court to open up the prosecution case against the accused No.65 to 67 and 71. While doing so, he has submitted about the brief history about the previous charges having been framed against the co-accused who have been shown in the previous charges as an offender, he has referred the previous discharge application and the orders passed thereon by adding that the said orders have attained the finality and that only one of the discharge order was challenged which was rejected, hence the discharge order passed by the predecessor has attained finality.

He has emphasised the concept of criminal conspiracy, the fact that some of the accused have arranged the meeting where the conspiracy, was hatched, some of them have addressed such meeting and some of the co-accused have attended the said meetings. It has been highlighted that the training camps were held and some of the accused have remained present in such training camps. The material to prepare bomb was purchased, vehicles were purchased and that during the course of the investigation, the left out articles and materials were recovered from the houses of the accused. In the case, the left out materials were sent to F.S.L. and that during the course of the investigation, it has been revealed as to who were members of SIMI and where the training camps were held. The conspiracy of serial bomb-blast was alleged to have been hatched by the accused and that in the serial bomb blast about 56 deaths had occurred and 240 serious injuries were sustained.

L.A. Mr.Dhruv has further submitted that every accused

need not to take active part in criminal conspiracy and that the participation of the accused can be inferred by necessary implication. He has relied upon the statements of secret witnesses A to Z, the statements forwarded with the charge-sheet, the panchnamas etc. He has read over the contents of the secret statement I and Z and it has been clarified by him that he is going to examine all the witnesses shown in the charge-sheet to establish the case against the accused.

Having shown reliance on the earlier charge-sheets, the material produced with the charge-sheet, the two charges already framed and the conduct of the accused as mentioned in the panchnamas drawn at the instance of the accused, Learned Special P.P. has concluded saying that according to him, this is sufficient material to frame charge against the four accused.

5. Upon completion of the argument of Learned Special P.P., Learned advocate Mr.I.M.Munshi for the accused has tendered this present application wherein he has submitted that there should be case wise submission by the P.P. and in absence of that, the interest of the accused would be adversely affected and the defence would be prejudiced.

He has however, stated that on perusal of the charge-sheets, there is absolutely no prima-facie evidence against the three accused.

6. Learned advocate Mr.I.M.Munshi has relied upon para-13 of the Judgement reported at **2000(3) ACR 2440 (SC)** in the matter of **Hukamsingh and Others Versus State of**

Rajasthan. Para-13 has been pressed into service to submit that Section 226 of the Code enjoins on a public prosecutor to open up his case by describing the charge brought against the accused and that Learned P.P. has also to propose as to what evidence he is to adduce for proving the guilt of the accused.

7. Having heard the rival submissions and upon perusal of the application and having heard learned advocates for the parties, following points have been emerged which this Court has considered to decide the present application.

- (a) Today, according to Learned Special P.P. Mr.Dhruv, he has opened up the case for prosecution. LA. Mr.I.M. Munshi expresses his dissatisfaction on the way the case has been opened.

This Court is of the opinion that how to open up the case, how to make submission and what should be included in the submission are the exclusive professional domine of the respective learned advocates representing the respective parties. The Court cannot exercise its powers to demonstrate any of the Learned advocate as to how should he address the Court and in what way he should open up the case.

The Judgement relies upon requires describing the charge brought against the accused by the P.P. which according to Learned Special P.P. he has described. This Court is of the opinion that this Court should not opine at this stage whether the said opening of the case can be termed to be satisfactory or not else it would amount to

give premature opinion as that is the base on which the Court is to decide either to frame the charge or to allow the discharge application if any tendered by the defence.

In nutshell, this Court is of the firm opinion that the Court has all powers to decide the merits of the submission and not to advise the parties or to direct the parties as to what should be the quality of the submission on law or facts. It seems that through the prayer in the application, Learned advocate for the defence wanted the Court to direct Learned Special P.P. to address the Court in particular manner which with all humanity at the command of this Court, this Court cannot and should not do.

- (b) Suffice it to say here that if the Court would not be convinced or satisfied about the substance in the prosecution case, the Court has liberty to not frame the charge and/or to allow the discharge application, but it would not be proper for this Court to express its opinion about the quality of the submission and or to opine aspect whether the submission made by Learned Special P.P. can be said to be the submission as is required to be made under Section 226 of the Cr.P.C. or not ?
- (c) In para-2 of the application, it has been contended that on perusal of the charge-sheet, no prima-facie case is made out against the accused.

This Court hardly required to state that if the defence has formed such an opinion, the devise and remedies are

provided in Cr.P.C. for the same, but the said opinion of the defence cannot strengthen the prayer made by the defence.

- (d) Without expressing any opinion on the quality and merit of the submission made while opening the case as required under Section 226 of Cr.P.C. by Learned Special P.P. Mr. Dhruv, this Court opines that the prayer sought for cannot be granted as it amounts to interference by the Court in the professional obligations to be discharged by the respective learned advocates for their respective clients.

8. In view of the foregoing opinion, this Court does not find any merits in the application. Hence following final order.

ORDER

The application stands rejected and is accordingly disposed of.

The matter is now kept on 27/12/2012 at 12:00 noon in this Court for further proceedings.

Dictated and pronounced in the open Court in the presence of all the Learned advocates for the both sides on this 26th day of December, 2012.

**(Jyotsna Yagnik)
Designated Judge,
Serial Bomb Blast Cases,
Ahmedabad.**