

Sessions Case No. 118/18**Order No. 04 dt. 19/07/18**

Both the accused persons namely Mukul Mondal and Pathik Mondal on C.B. are present by filing hazira. The record is taken up passing order. On the date of charge hearing i.e on 12.07.2018 Ld. Advocates for the accused persons made an oral prayer for discharge of the accused persons. Heard Ld. P.P. in Charge and Ld. Defence Counsel.

Ld. Advocate for the accused persons submitted that the defacto complainant Subodh Mondal on basis of suspicion filed this F.I.R. against the accused persons. There is no direct evidence of alleged murder against these accused persons. It is further pointed out that in the post mortem report the manner and cause of death is mentioned as cardio respiratory failure due to probably asphyxia and that was probably suicidal. As such the allegation of murder does not stand. That apart on the basis of extra judicial confession the F.I.R. has been filed and I.O. filed charge without proper investigation. The accused persons are entitled to be discharged.

Ld. P.P. charge submitted that on the basis of the F.I.R. filed by Subodh Mondal Islampur P.S. Case No. 403/14 dated 6/11/14 u/s. 302/34 I.P.C. has been started against the accused persons. The accused persons have confessed their guilt and the reason of death was asphyxia and antemortem in nature. The available witnesses were examined and they supported the case. As such, the investigating officer of this case has rightly filed charge sheet against the accused persons and there is sufficient material for framing charge against the accused persons.

As per F.I.R. the allegation is that on 04/11/2014 at about 6.00 am. the defacto complainant on getting information went to the mango orchard of Sanat Kumar Mondal and found that the dead body of his son Swarajit Mondal was hanging from the branch of a mango tree. They brought down the dead body and performed the funeral work of his son. On 5/11/2014 he came to know from the accused Pathik Mondal that the accused Mukul Mondal has murdered his son by throttling and thereafter with his help the dead body of his son was hanged from the branch of tree.

In course of investigation the investigating officer of this case seized the rope. The statements of two witnesses was recorded u/s 164 Cr.P.C. by the Ld. Magistrate and post mortem report shows that the reason of death was cardio respiratory failure due to asphyxia and that was antemortem in nature. In the opinion of doctor that was probably suicidal. The opinion of doctor is not a conclusive evidence and that is relevant. The alleged murder was done in the night and as such there is no possibility of getting direct evidence and he has to be decided from the attending circumstances which would reveal from the evidence to be led by the prosecution. This can not be decided at this stage.

satisfied that the accusation made against the accused person is not frivolous and there is some materials for proceeding against him.

Hon'ble Supreme Court in State of Bihar -Vs- Ramesh Singh AIR 1977 (SC) 2018 has observed that "Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

On consideration of various authorities, their Lordships of Hon'ble Supreme Court in Union of India -Vs- Prafulla Kumar Samal AIR 1979 SC 366 laid down the following principles for discharging or framing of charge.

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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;

(2) 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.

(3) The test of determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a

Post-Office or a mouth-piece of the prosecution, but has to consider the broad

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probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

What is required at the time of discharging u/s. 227 Cr.P.C. is a consideration whether there is ground for presuming the commission of the offence or whether the charge is groundless. The question whether the charge will eventually stand proved or not can be determined only after evidence is recorded in the case. Roving and detail inquiry as to merits and demerits of the case at this stage is not required.

Perused the statements u/s. 161 Cr.P.C. of the witnesses recorded by the Investigation officer and also the statements of witnesses u/s 164 Cr.P.C. recorded by Ld. Judicial Magistrate and other materials on record and, in my view there is sufficient materials for framing charge against both the accused persons.

In the decision reported in AIR 1977 (SC) 2018,(State of Bihar-Vs- Ramesh Singh) Hon'ble Apex Court has further observed that “If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S. 227 or S. 228, then in such a situation ordinarily and generally the order which will have to be made will be one under S. 228 and not under S. 227.”

Now, considering the materials on record and in the case diary and relying upon the principle as enunciated by Hon'ble Supreme Court I am of the view that there is prima facie material for framing charge against the accused persons. As such, the prayer for discharge by the accused persons is rejected.

To 31.07.2018 for framing of charge.

Dictated & corrected by me.

Additional District & Sessions Judge,
2nd Court, Lalbagh, Murshidabad.

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2nd Court, Lalbagh, Murshidabad.

