

Neutral Citation No. - 2023:AHC-LKO:78945

AFR

RESERVED ON 16-10-2023

DELIVERED ON 29-11-2023

Court No. - 18

Case :- APPLICATION U/S 482 No. - 6741 of 2023

Applicant :- Jawahar Lal And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A., Satyendra Kumar Tiwari

Hon'ble Shree Prakash Singh, J.

1. Heard Sri Ramakar Shukla, learned counsel for the applicants, Smt. Nusrat Jahan, learned A.G.A. for the State and Sri Satyendra Kumar Tiwari, learned counsel for the complainant.

2. By means of instant application, the applicants have assailed the impugned order dated 10-02-2023 passed by the learned Sessions Judge, Sultanpur (now pending in the court of learned Additional Sessions Judge, Court No. 4, Sultanpur) in Sessions Trial No. 1080 of 2022 'State of U.P. Vs. Sadhna @ Gudiya and Another, arising out of Case Crime No. 77 of 2022, under sections 302/34, & 201 of I.P.C., Police Station- Sangrampur, District- Amethi.

3. The facts of the case, in brief, are that the first information report was lodged by the complainant, namely Banshi Lal Gupta on 29-04-2022, at 04.01 P.M. with respect to the incident which occurred on 04-04-2022. On the said date, the complainant's son, namely, Anikesh @ Madan, aged about 22 years, left his house at about 07.00 P.M. to visit Kalikan Dham. On the way, he met the applicants nearby their houses, but, thereafter, he did not come back. It is alleged that the applicant no. 2 namely, Sadhna @ Gudiya was having love affair with the complainant's son, but, her family members were against this love affair and they used to threaten the complainant's son. On 06-04-2022, a missing report of complainant's son was lodged. The marriage of the applicant no. 2 was to be solemnized on 23-04-2022 with some other person. On 22-04-2022, a day before her marriage, applicant no. 2 called the nephew of complainant's son namely, Nitesh and tried to handover mobile phone, purse, driving license and Aadhaar Card etc. of the complainant's son, but, Nitesh refused to take the same and informed the family members about the incident.

4. After the 'Vidai Ceremony' of applicant no. 2, the complainant made a complaint to the father of the applicant no. 2 with respect to the previous incident that occurred on 22-04-2022. On this, the father of the applicant no. 2 requested the complainant not to lodge the first information report.

5. On 28-04-2022, complainant saw the dead body of his son hanging with hook near animal hospital. It is alleged that the applicants along with some other unknown persons killed the son of the complainant and they concealed his dead body.

6. Later on, the matter was investigated by the Investigating Officer and it was found that the deceased himself committed suicide, whereafter, on the application of the complainant, the matter was re-investigated and the Chargesheet was filed under section 306 of I.P.C.

7. Contention of the counsel for the applicants is that there is delay of about 25 days in lodging the first information report, as the incident occurred on 04-04-2022 and the first information report was lodged 29-04-2022. He submits that initially the first information report was lodged for missing of the son of the complainant, but, no allegation was levelled against the applicants, but, after the first information report was lodged under sections 302 & 201 of I.P.C., the chargesheet was filed against the applicants under section 306 of I.P.C. He further added that an application was moved by the complainant on 10-02-2023 before the learned trial court for framing of charges against the applicants under sections 302/34 & 201 of I.P.C. and on the said application, the learned trial court framed the charges against the applicants for abovesaid offences, which is against the settled proposition of law.

8. He contends that the learned trial court could not have passed the order on an application moved by the complainant as there is no such provision provided in the Code of Criminal Procedure(hereinafter referred as '**Code**'). Referring the Sections 227 & 228 of the Code, he added that it is not open to the complainant to move any application for framing of charges and it is to the court concerned, to form an opinion that there is a ground for presuming that the accused has committed an offence and thereafter, the court can frame charges.

9. In support of his submissions, he has placed reliance on the Judgment of the Apex Court, reported in **(2017)3 Supreme Court Cases, 347, P.Kartikalakshmi Vs. Sri Ganesh and Another** and has referred paragraph no. 7 of the said Judgment, which is quoted hereinunder :-

"7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised."

10. Referring the aforesaid, he submits that the case of the present applicant is squarely covered with the

ratio of Judgment abovesaid and therefore, the impugned order dated 10-02-2023, is unsustainable.

11. Per contra, learned counsel appearing for the complainant has contended that the statement of the applicant no. 2, namely, Sadhna @ Gudiya, recorded under section 161 of Cr.P.C., clearly indicates that there was love affair in between the applicant no. 2 and the complainant's son(deceased) and the family members of the applicant no.2 were against the said love affair, which clearly postulates a motive behind killing the complainant's son. He further submits that although the complainant moved an application for framing of charge, yet, the learned Magistrate applied his own mind and gave due consideration to the materials placed on record and thus, the charges have rightly been framed under sections 302/34 and 201 of I.P.C. against the applicants.

12. In rebuttal of the contentions of learned counsel for the applicants, he added that there is no denial in the Code that the application by the complainant cannot be moved. He submits that the application has been moved by the complainant only to bring the facts before the trial court so that the charges can be framed in a correct manner and therefore, in the aforesaid circumstances, no prejudice is caused to anyone and thus, no interference is warranted in the impugned order dated 10-02-2023 passed in Sessions Trial No. 1080 of 2022.

13. Learned A.G.A. appearing for the State has also supported the version of the learned counsel for the complainant and submitted that there is no denial of moving of the application in the provision prescribed for framing of the charges, by the trial court. Indicating the analogy with respect to provision of Section 227 (Discharge) as provided under the Code, she added that infact, so far as the discharge is concerned, no such provision is there, but, the applications are moved for discharge of the accused and that are being considered and therefore, so far as the framing of the charges are concerned, if an application is moved by the complainant, the same can be entertained by the trial court and therefore, there is no ambiguity or illegality in the impugned order dated 10-02-2023.

14. Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that after filing of the chargesheet, the matter proceeded and an application was moved by the complainant as application no. 7 Kha, under section 228 of the Code and certain material facts were brought in the said application, while substantiating the fact that the offence has been committed by the applicants/accused persons under section 302 readwith sections 34 and 201 of I.P.C.. The fact remains that the Investigating Officer, after thorough investigation, filed the Chargesheet under section 306 of I.P.C. The learned Sessions Court on the application moved by the complainant and taking materials mentioned in the application, formed an opinion that there is a ground

for presuming that the accused has committed an offence under sections 302/34 and 201 of I.P.C. and has ignored the chargesheet which was filed under section 306 of I.P.C. alongwith the material evidences collected by the Investigating Officer.

15. Now, the question which needs to be answered is that ;

'Whether the learned trial court was correct in framing the charges on the application of the complainant ?'

16. When this court examines the facts and law in the given situation, it reveals that the complainant lodged the first information report against the applicants on 29-04-2022, showing the incident dated 04-04-2022, after he saw the dead body of his son, hanging in ruin near the Animal Hospital on 28-04-2022. The Investigating Officer, after collecting the material evidences came to the conclusion that it is not the case of murder, but, it is a suicide case and thereafter, the chargesheet was filed and the matter proceeded and the complainant moved an application under section 228 of the Code bearing application no. 7 Kha and averred the material facts and evidences and it was requested that the charges be framed under section 302 of I.P.C. against the applicants/accused persons. Considering and allowing the application moved by the complainant, learned Sessions Court passed the order on 10-02-2023 and framed charges under sections 302/34 and 201 of I.P.C. on 10-02-2023.

17. This Court is cautious about the settled law that application of judicial mind can be tested that whether the trial court at the stage of discharge has gone into the issue of whether a case has been made out by the prosecution for proceeding with trial and at the same time, this can also be examined that whether the trial court has stepped in examining the defence of accused as well as the prosecution as at the stage of framing of charges, the mini trial cannot be done or such court cannot go into the merits of the case but the consideration is to the material on account of which the Court can presume that the accused has committed the offence which is triable and thereafter, the required charges is to be framed. Time and again this issue has widely been discussed by the Apex Court and it has been held in case of State of Gujrat Vs. Kishore Singh Rao that at the time of framing of charges and taking cognizance, the accused has no right to produce any material and call upon the court to examine the same.

18. With the same pen, it has also been held that no provision of the Code could give right to the accused to file any material or document at the stage of framing of charge and, therefore, the trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether the case has been made out by the prosecution for trial on the basis of the charge sheet material only. In this background of the matter, the analogy can be drawn that once an accused cannot be given a right to produce any material or any request to examine the same, the

complainant at the same time would have no right to produce any material with request to examine the same at the stage of framing of charges, but, the trial court is to consider the charge sheet material only and, therefore, any material in form of fact or evidence cannot be allowed to be placed by the complainant and examined by the trial court.

19. So far as the provisions for framing of charges envisaged under section 228 of the Code are concerned, the same does not open, for moving of an application by the complainant, for framing of charges. The provisions of Section 228 of the Code are reproduced hereinunder :-

“228. Framing of Charge:

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

20. Referring the aforesaid, he submits that under the provision of Section 227 of the Code, which speaks about the discharge of an accused, the accused and the

prosecution have an opportunity to be heard and the stage of framing of charges, starts after application of mind by the learned trial court on the discharge whereas the provision of section 228 it starts with the wordings that 'After if any such consideration and hearing aforesaid', meaning thereby that the complainant has no occasion or opportunity to move any application at the stage of framing of charges.

21. It is a trite law that a thing is to be done in manner prescribed in the statute and not otherwise and therefore, in absence of any overt provision, the application with prayer to frame the charges for the particular offence, moved by the complainant, is against the provisions of law, prescribed in the Code. Probably, the legislature cautiously did not provide such provision and to meet out with such exigency, the provisions under section 464 of the Code is provided which rectifies the effect of omission to frame, or absence of, or error in charge.

22. This court is of considered opinion that at the stage of framing of charges, considering the materials, placed through an application moved by the complainant, is unsustainable in the eyes of law.

23. In view of the aforesaid submissions and discussions, it emerges that the order dated 10-02-2023 has been passed, taking note of the facts, placed vide application of the complainant, whereas the same goes against the provisions of Section 228 of the Code.

24. Consequently, the impugned order dated 10-02-2023 passed in Sessions Trial No.1080 of 2022 (*State of U.P. Vs. Sadhana@Gudia*) is hereby set aside.

25. The matter is transmitted back to the Sessions Court concerned to proceed afresh, in accordance with law.

26. The instant application is **allowed** accordingly.

Order Date :- 29-11-2023

AKS