

Jharkhand High Court

Ram Kumar Mehta Son Of Late Dhupan ... vs The State Of Jharkhand on 28 June, 2021

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 161 of 2012

Ram Kumar Mehta son of Late Dhupan Ram, resident of village
Madwania, P.O. and P.S. Nagaruntari, District:- Garhwa
... .. Petitioner

Versus

The State of Jharkhand Opposite Party

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. A. K. Kashyap, Senior Advocate Mr. Anurag Kashyap, Advocate For the State
: Mr. Bishwambhar Shastri, A.P.P.

Through Video Conferencing

14/28.06.2021 Heard learned Senior counsel for the petitioner Mr. A. K.

Kashyap, Senior Advocate, along with Mr. Anurag Kashyap, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Bishwambhar Shastri, learned A.P.P. appearing on behalf of the opposite party- State.
3. The present application is directed against the order dated 09.02.2012 passed by learned Additional Sessions Judge, II nd, Garhwa in connection with S.T. No. 61 of 2010 arising out of Dhurki P.S. Case No. 12 of 2007 corresponding to G.R. Case No. 156 of 2007 registered under Sections 364/120-B of Indian Penal Code whereby the petition filed by the petitioner for his discharge has been rejected.

Arguments on behalf of the petitioner

4. Learned Senior counsel for the petitioner further submits that the only allegation against the petitioner is that the petitioner being the principal of the school, had permitted one call to be received by the victim boy (age 13 years) saying that the phone call was of his maternal uncle (mama), pursuant to which the victim boy had left the school and went to his house and thereafter, proceeded further. The learned Senior counsel submits that apart from this, there is no further

material against the present petitioner. It is not in dispute that as per the present records of this case, the boy has not yet been recovered.

5. The learned Senior counsel submits that initially final form was filed showing lack of evidence against the petitioner and other accused, but subsequently the learned court below had taken cognizance of the offence. He also submits that the order taking cognizance was challenged before this Court in Cr.M.P. No. 1374 of 2009, but subsequently when the matter proceeded before the learned court below, the petitioner filed an application for discharge which stood rejected by the impugned order and accordingly, the Cr.M.P. No. 1374 of 2009 was dismissed as infructuous by this Court vide order dated 13.04.2021.

6. The learned Senior counsel for the petitioner further submits that upon perusal of the impugned order dated 09.02.2012, it is apparent that the learned court has not applied its mind to the materials on record and the impugned order is a non-speaking order, in as much as, the relevant paragraphs of the case-diary have not been specifically referred to in the impugned order. The learned Senior counsel submits that the impugned order being non-speaking order, the matter is fit to be remanded back to the learned court below for fresh consideration of the materials on record.

7. The learned Senior counsel has also submitted that there is a difference between 'suspicion' and 'grave suspicion' and the application for discharge of the petitioner has been rejected although the petitioner has been made accused only on mere suspicion and there is no material against the petitioner as such to connect him with the alleged offence. He has referred to a judgement passed by the Hon'ble Supreme Court reported in (2014) 3 SCC 401 [Gulam Sarbar Vs. State of Bihar (Now Jharkhand)] (paragraph 11 to 24) on the point of basic ingredients for the offence of criminal conspiracy.

Arguments on behalf of the opposite party- State

8. The learned counsel appearing on behalf of the opposite party- State, on the other hand while opposing the prayer, has submitted that the impugned order is detailed order indicating the materials collected during investigation. He also submits that merely because the paragraph number of the case diary has not been specifically referred to, the same is not sufficient to say that the impugned order is a non-speaking order. He has also submitted that the case-diary was also called for by this Court, which is on record and the findings of the learned court below match with the materials collected during investigation and recorded in the case diary. The learned counsel refers to the counter affidavit filed in the present case.

9. The learned counsel for the State also submits that the petitioner is involved in criminal conspiracy, which may not have direct evidence against him and it is for the petitioner to face the trial and only at the end of the trial, the evidences would indicate as to whether the petitioner has committed any offence or not. He submits that it is premature to say that the petitioner has no role to play in the alleged offence. He also submits that the subsequent conduct of the petitioner as recorded in the case diary is also indicative of the fact that the petitioner is involved in the alleged offence. Findings of this Court

10. After hearing the learned counsel for the parties, this Court finds that it is not in dispute that the prosecution case was initiated on the basis of fard beyan of one Baleshwar Prasad Yadav (father of the victim boy, aged 13 years) recorded on 26.02.2007 stating inter alia that he was working as Shiksha Mitra in Utkramik Madhya Vidyalaya and on 23.02.2007, he had gone to Nagaruntari with his daughter who had to appear in matriculation examination. When he returned in the evening at about 4 p.m., his wife informed him that his son had gone to school and on the mobile of the petitioner, Mama of his son called him to Ramana. Thereafter, his son came to the house at 11.45 a.m. and informed his mother that the phone call of elder Mama had come at mobile of the petitioner, who called him to Ramana thereupon, the wife of the informant had given one KG Mahua to sell in the market. It was alleged that the son of the informant namely Dipak did not return in the night and the informant thought that he might have remained in the house of his Mama. Next day, when the informant again went for examination of his daughter and returned in the evening, he was informed that younger Mama had come and told that Dipak had not gone to the house of Mama and then the informant went to Ramana and inquired from the people. Thereafter, the informant asked the petitioner, who told him that on 23.02.2007 in between 11 a.m. to 12 hours, call had come at his mobile and he gave the mobile to Dipak who had a talk and told that Mama had called him to Ramana. It is also alleged that when the phone number was demanded from the petitioner from which the call was made, he replied that the same was deleted. The informant has also stated that in spite of search, his son could not be found. The informant alleged that his son was called for the purposes of murder and he was kidnapped. The mobile number of the petitioner was also mentioned in the First Information Report.

It was alleged in the First Information Report that there was land dispute between Rambadan Yadav and Mithu Yadav for which Panchayati was held in which informant had participated as Panch of Rambadan Yadav, upon which Mithu Yadav threatened of dire consequences due to which suspicion was raised against Mithu Yadav.

11. During the course of investigation, the petitioner was interrogated by police and the police submitted final form being Final Form No. 98 of 2008 dated 31.12.2008 showing the case true. It was also recorded in final form that no clue could be found regarding the whereabouts of the son of the petitioner and the final form was submitted under Section 364(A) of Indian Penal Code. The final form indicated lack of evidence against both the arrested persons i.e. the petitioner and Sunil Kumar Singh and it also indicated that the investigation was closed.

12. In spite of submission of final form showing lack of evidence against the petitioner, the learned trial court had found material, inter-alia, against the petitioner and took cognizance of the offence under Section 364/120-B of the Indian Penal Code against the petitioner and others. The order taking cognizance was challenged by the petitioner in Cr.M.P. No. 1374 of 2009. The said criminal miscellaneous petition remained pending before this Court and the learned court below proceeded. Accordingly, the petitioner filed application for his discharge which stood rejected by the impugned order in the present case. On account of subsequent development, the Cr.M.P. No. 1374 of 2009 was dismissed as infructuous by this Court vide order dated 13.04.2021.

13. The main point argued by the learned Senior counsel for the petitioner is that the impugned order does not reflect application of mind by the learned court below and is a non-speaking order which does not mention any paragraph of the case diary and accordingly the application for discharge requires fresh consideration. It has also been argued by the learned Senior counsel that the petitioner has been made accused merely on the basis of suspicion and there is no material against the petitioner to connect him with the alleged offence.

14. On the other hand, it has been submitted by the learned counsel for the State that the impugned order is a detailed order indicating the materials collected during investigation. It has also been submitted that though the paragraph numbers of the case-diary have not been specifically mentioned in the impugned order, but that by itself does not make an impugned order non-speaking. It has also been submitted on behalf of the State that case-diary has been called for and upon perusal of the case-diary, it is apparent that the impugned order is based on materials collected during investigation and the relevant paragraphs have been specifically mentioned in the counter affidavit. It has also been submitted that the present case is a case of criminal conspiracy and there is enough material to draw strong circumstantial evidence against the petitioner which is enough to frame charge. He has also submitted that there may be direct or indirect evidences in the matter of criminal conspiracy and conspiracies are hatched secretly.

15. It is not in dispute that the victim boy was 13 years of age on the date of occurrence. Upon perusal of the impugned order dated 09.02.2012, this Court finds that the learned court below has perused the records and the case-diary. It has been recorded in the impugned order that the petitioner was the head-master of the school in which the victim boy namely Dipak was studying, who is the son of the informant. The aforesaid aspect of the matter is not in dispute. It has also been mentioned in the impugned order that the petitioner told Dipak that his Mama was calling him on mobile and consequently, Dipak talked through mobile and went to his house. He told his mother that his Mama was calling him at Ramana and her mother gave one KG of Mahua to be sold in the market. The victim went on his bicycle and did not return. It has been recorded by the learned court below that on perusal of the case-diary, it appeared that the informant had asked the accused as to what was the number from which the phone call had come and the petitioner told that the number had disappeared. It has further been recorded that when the investigating officer of the case on 24.02.2007 asked him about the number, he told that the number had disappeared because in his mobile only last ten calls remain for identification. It has also been recorded that when the C.D.R. print out of the mobile number of the petitioner was taken, it revealed that there were only six calls received from 23.02.2007 to 24.02.2007 and the caller ID of the phone call involved in the present case was available in the mobile of the petitioner, but he did not disclose the same to the police or the informant for the reasons best known to him. The learned court below also took into consideration that further evidence collected and recorded in the case-diary indicated that after the victim departed for Ramana Bazar, the petitioner went to Ramana Bazar by his motorcycle leaving the school on a working day. It has also come during investigation that when the phone of the petitioner was seized, the investigating officer had received a call on the mobile of the petitioner which was a call from another phone number mentioned in the impugned order in which the caller told to tell the informant not to go here and there and pay Rs. 2 lakhs and the caller did not disclose his name to the investigating officer even when the investigating officer asked him as to who was

calling.

The learned court below, considering the aforesaid facts and circumstances, was of the view that the person was contacting the present petitioner who had kidnapped the victim boy. From the C.D.R. print out of the mobile number of the petitioner taken out by the Investigating Officer, it revealed that one Sunil Kumar Singh had called on the mobile of the petitioner, but the petitioner did not tell about him. Though, another call was also received by the petitioner from Sunil Kumar Singh and when Sunil Kumar Singh was interrogated by the investigating officer, he was found having suspected behaviour.

16. This Court finds that though specific references to the various paragraphs to the case-diary have not been mentioned in the impugned order, but the gist mentioned in the impugned order is reflected in the case-diary and the counter-affidavit gives specific reference to the relevant paragraphs of the case diary. In the aforesaid circumstances, this Court is of the view that the impugned order cannot be said to be non-speaking merely because the specific paragraphs have not been mentioned in the impugned order refusing to discharge the petitioner. This Court is of the view that the materials collected during investigation and mentioned in the impugned order reveal strong suspicion against the petitioner against whom criminal conspiracy is alleged in the commission of offence. There can be no doubt that it is very difficult to get direct evidence in case of criminal conspiracy and there could be indirect evidences/circumstantial evidences to convict an accused. This Court is of the considered view that the materials which are reflected in the impugned order are sufficient to frame charge against the petitioner. The involvement of the petitioner is certainly to be proved beyond all reasonable doubts by the prosecution during trial and the materials on record certainly constitute strong suspicion against the petitioner, which are sufficient to frame charge against the petitioner.

17. In the judgement passed by the Hon'ble Supreme Court reported in (2014) 3 SCC 401 [(Gulam Sarbar Vs. State of Bihar (Now Jharkhand)] the matter was under consideration after trial of the accused. The Hon'ble Supreme Court considered the basic ingredients of conspiracy in para 11 and ultimately dismissed the appeal by holding at para 23 that, the High Court rightly observed that normally the perpetrator of crime in a case of conspiracy does not take part in the execution rather such conspirator hires some criminal directly or indirectly to execute the evil design planned by him. There may be circumstances where the conspirator remains vigilant to conceal his identity and would not disclose the actual motive behind the conspiracy. Paragraphs 11, 12 and 23 of the aforesaid judgement are quoted as under :- "11. The essential ingredients of criminal conspiracy are:

- (i) an agreement between two or more persons;
- (ii) agreement must relate to doing or causing to be done either
 - (a) an illegal act, or
 - (b) an act which is not illegal in itself but is done by illegal means.

What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an offence. The offence takes place with the meeting of minds even if nothing further is done. It is an offence independent of other offences and punishable separately. Thus, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of proving criminal misconduct on the part of an accused. Criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The offence can be proved by adducing circumstantial evidence or by necessary implication. Meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence in cases where circumstantial evidence is incomplete or vague. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them between the parties. Agreement is essential. [Vide *Kehar Singh v. State (Delhi Admn.)*, *State (NCT of Delhi) v. Navjot Sandhu*, *Mir Nagvi Askari v. CBI*, *Baldev Singh v. State of Punjab*, *State of M.P. v. Sheetla Sahai*, *R. Venkatkrishnan v. CBI* and *S. Arul Raja v. State of T.N.*]

12. In *Mohd. Amin v. CBI*, it was held that in order to come under this provision it is not necessary for the accused to know the detailed stages of conspiracy; mere knowledge of main object/purpose of the conspiracy would suffice for this section. Similarly, in *Vikram Singh v. State of Punjab* this Court dealt with a case where the accused had purchased Fortwin injection and chloroform. Thus, it was held that since the purchase of these materials was an initial step towards commission of offence, the presence of co-accused Sonia, though not referred to by the witnesses at the time of actual kidnapping would not imply that she was not privy to the conspiracy and conviction of the accused under Section 120-B IPC was upheld.

23. The High Court reappreciated the evidence and upheld the findings of facts recorded by the trial court observing that the ocular evidence was in consonance and in conformity with the medical evidence and it was a clear-cut case of conspiracy. The High Court rightly observed that normally the perpetrator of crime in a case of conspiracy does not take part in the execution rather such conspirator hires some criminal directly or indirectly to execute the evil design planned by him. There may be circumstances where the conspirator remains vigilant to conceal his identity and would not disclose the actual motive behind the conspiracy."

18. This Court is of the considered view that the aforesaid judgement is of no help to the petitioner at the stage of discharge and the involvement of the petitioner in the alleged criminal conspiracy is to be seen at the stage of trial.

19. This Court is of the considered view that the impugned order is neither perverse nor non-speaking nor suffer from any material irregularity or illegality calling for any interference in revisional jurisdiction. Accordingly, the present criminal revision petition is hereby dismissed.

20. However, it is made clear that any observation/findings recorded by this Court will not prejudice the case of the petitioner before the learned court below at the stage of trial.

21. Interim order, if any, stands vacated.
22. Pending interlocutory application, if any, is dismissed as not pressed.
23. Let a copy of this order be communicated to the learned court below through 'FAX/Email'.

(Anubha Rawat Choudhary, J.) Pankaj