

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE B.A. PATIL

CRIMINAL REVISION PETITION NO.1172 OF 2019

DATED: 31-10-2019

Shri. Sundar P Gowda vs. State of Karnataka by
Tavarekere Police Station,

O R D E R

This petition has been filed by the petitioner-accused No.1 challenging the order passed by III Additional District and Sessions Judge, Ramanagar in S.C.No.77/2017 dated 17.08.2019, whereunder the application filed under Section 227 of Cr.P.C was dismissed as against the accused Nos.1 to 5 and was allowed in respect of accused No.6 and discharged for the offence punishable under Section 304 II read with 34 of IPC.

2. I have heard the learned counsel Sri. M.S. Shyamsundar for petitioner-accused No.1 and Sri. V.M. Sheelvant the Special Public Prosecutor-I for respondent-State.

3. The brief facts of the case are that accused No.1 being the producer, accused No.2 - R. Nagashekar being the Director, accused No.3 - Maradappa @

Siddharth @ Siddu being Assistant Director, accused No.4 - K. Ravikumar @ Ravivarma being Stunt Director and accused No.5 - S.Bharath Rao being the Unit/production Manager of Kannada movie called 'Masthigudi' were intending to shoot the climax scene of the said movie at the back water of Thippagondanahalli Reservoir by using a Helicopter. It is further alleged that in the process of shooting the climax scene, the accused Nos.1 to 5 along with accused No.6 on 07.11.2016 at 2.45 p.m., violated the conditions of licenses and permissions granted by public authority. In that process, the accused persons made actor "Duniya Vijay" the Hero of the movie and actors "Raghav Uday" and "Anil Kumar" the Villains of Masthigudi, boarded the Helicopter along with the Stunt Director - accused No.4. The Helicopter with its doors open was hovering at a height of 25 to 30 feet at right middle of Thippagondanahalli Reservoir. At that time, the Stunt Director had made the said actors to jump off the Helicopter, which was hovering. After the said jump off, the actors/Villains drowned in the said water. The accused persons were knowing fully well that the Villains Actors were not knowing swimming and without taking adequate precautionary measures thereby committed offence punishable under Section 304 read with 34 of IPC.

4. After investigation, the charge sheet was filed against the accused. The accused appeared before the court and they filed the application under Section 227 of Cr.P.C. for discharge. The Court below after considering the said submissions has dismissed the application. Challenging the same, the petitioner-accused No.1 is before this Court.

5. The main grounds urged by the learned counsel for the petitioner-accused No.1 is that accused No.1 has involved in many movie making business and he is only the producer and the other liability have been fixed to the other persons. It is further submitted that there is no vicarious liability fixed on the accused. It is his further submission that the Director is only the investor of the said amount and other activities are going to be left to the remaining Directors, who are shooting the said film. It is his further submission that as per the script story, it needs that the actors, who are considered to be villains have to jump from the hovering Helicopter and knowing about the said risk, they have attempted and they have taken up the said task and unfortunately, death has taken place. It is his further submission that deceased have undertaken to the said risk of stunt work and under such

facts and circumstances the said Act comes even within the General Exceptions under Section 80 of IPC and the said offence, which is done is not with any intention and it is accidental and it is misfortunate and they were not having any intention or knowledge of the commission of the said offence. It is his further submission that if the act, which is not known to likely to cause death or grievously hurt and if it is done with consent of the said deceased persons then under such circumstances, the said act will be covered under the provisions of Section 87 of IPC and it will not be constituting an offence. It is further contended that the act has been done with consent and in good faith for the persons benefit. When shooting was going on, it was the essential part of the shooting and the consent has been given by the deceased persons. In that light, if the entire material is looked into, it also covers under Section 88 of IPC and it is not an offence at all. It is further submitted that no willful negligence or any careless act can be attached to the act of the accused persons. There is no criminal liability to attach anything to the accused. It is further contended that the ingredients of Section 304 of IPC cannot be fastened on the accused. The alleged act is an unfortunate act. Under such circumstances, the Court below ought to have

discharged the accused. The Court below has not exercised its jurisdiction properly and has erroneously rejected the application filed under Section 227 of Cr.P.C., It is his further submission that the trial Court, in the absence of any material to show that no abundant cause and action, has been taken by the accused, it ought to have discharged accused No.1. On these grounds, he prayed to allow the petition and to set aside the impugned order.

6. *Per contra*, the learned Special Public Prosecutor-I submitted that the material clearly goes to show that there is breach of condition, which has been granted. The charge sheet material clearly goes to show that after completion of the film shooting, all the things have been packed up and subsequently, the said scene has been dropped and after closure of the said shooting, the Hero of the film and the Villains were made to board the helicopter along with stunt director knowing fully well that the deceased were not knowing swimming and made them to jump off the Helicopter, which was hovering, without taking adequate safety and precautionary measures. As a result of the same, both the villains drowned in the water and died. It is further submitted that there is *prima facie* material as against the accused to

show that no precautions have been taken and they knew that the Villains did not know swimming and they have made the Villains to jump from the hovering Helicopter and as a result of the same, they have drowned. It is further submitted that the trial Court, after considering the facts and circumstances, has rightly dismissed the application.

7. It is his further submission that the contentions which has been taken up by the accused-petitioner clearly goes to show that they want to throw the blame on each other. That itself is sufficient to constitute *prima facie* case as against the accused and the matter has to be considered and appreciated at the time of the evidence and not at this premature stage. He further submitted that all the defence taken are of inconsistent as they are of question of fact. On these grounds, he prays to dismiss the petition.

8. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records. Before going to consider the said contentions, I feel it just and proper to extract Section 304 of IPC which reads as under:

"304. Punishment for culpable homicide

not amounting to murder:- Whoever commits culpable homicide not amounting to murder shall be punished with (imprisonment for life), or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death”.

9. On close reading of Section 304 of IPC, it punishes a person, who commits culpable homicide not amounting to murder. From the factual matrix of the case is concerned, the death of two victims is an unnatural death and even the said fact has not been disputed during the course of argument to the effect that the shooting of the film ‘ Masthigudi” was done at Thippagondanahalli Reservoir. At that time, the alleged incident has taken place and the villains – victims jumped of the hovering helicopter and they were drowned and died in the said reservoir. Whether it

amounts to culpable homicide not amounting to murder? is a factual matrix which has to be considered and appreciated only at the time of trial but not at this pre-mature stage, the intention of the accused persons cannot be gathered in this behalf.

10. Be that as it may. Another issue, which is also involved in this case is whether the said act of the accused persons are with knowledge or without intention has to be determined by taking into the facts and circumstances of the case and if it is done with the knowledge, then under such circumstance, the accused persons are liable to be punished for the offence punishable under Section 304(II) of IPC and if the intention is not there, then under such circumstance, the accused persons are liable to be punished under Section 304(I) of IPC. That particular matter has to be determined only if it falls within the exceptions stated under Section 300 of IPC. For the purpose of brevity, I quote Section 300 of IPC, which reads as under:

“300. Murder.- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –

Secondly.- If it is done with the

intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –

Thirdly.- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly.- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

11. On close reading of the said Section, it also enumerates the fact that whether it falls within part 1 or part 2 is a matter of fact. Whether it comes within the exception under Section 300 or not is also a matter which has to be considered and appreciated only when the prosecution is going to lead the evidence. Without there being any evidence now the Court cannot determine under which part of Section 304 the said offence falls, whether it falls within the exception Nos.4 or 5 has to be determined only at full fledged trial, not at this pre-mature stage. In that light also, the contention taken up by the learned counsel for the petitioner that the provisions of Section 304 is not attracted is not acceptable.

12. I have carefully and cautiously gone through the charge sheet material, which has been made available during the course of argument. On close reading of the chargesheet material, the main allegation, which has been made as against the petitioner/accused is that he being a director, he has obtained the necessary permission from the Government Authorities and without taking any adequate safety measures and knowing fully well that they do not know swimming, they have ventured to shoot the film 'Masthigudi' and they have asked the villains to jump from the hovering helicopter and because of failure of adequate safety measures, the alleged incident has taken place. In that light, it cannot be held that the provisions of Section 304 of IPC are not applicable to the facts of the case on hand.

13. The next contention of the learned counsel for the petitioner/accused is that the said act falls within the general exceptions under Sections 80, 87 and 88 of IPC. I have cautiously gone through the said provisions, if the said provisions of the general exceptions are to be made applicable, then under such circumstance, it is a defense open to the accused to bring the case of the prosecution under any one of the exceptions. That particular factor has to be taken into consideration only at the time of trial. It is well proposed proposition of law that at the time of considering the application for discharge, no doubt the Court has to

weigh the material placed on record, but it should not hold a mini trial and come to a proper conclusion. What has to be seen at the time of framing the charge has been determined by the Hon'ble Apex Court in Catena of decisions. No doubt, the Court has got undoubted power to shift and weigh the evidence for the limited purpose of finding out as to whether there is a prima facie case has been made out as against the accused or not? The test to determine a prima facie case would naturally depend upon the facts of each case and no straight jacket formula or universal law can be made in this behalf.

14. It is well settled proposition of law by the Hon'ble Apex Court in the case of *UNION OF INDIA Vs. PRAFULLA KUMAR SAMAL AND ANOTHER* reported in *(1979) 3 SCC 4* has it has been observed that where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing the charge. By and large if two views are equally possible and gives suspicion, then the Court can proceed to frame the charge after applying judicial mind determines to hold a trial. For the purpose of brevity I quote paragraph No.10 of the said decision, which reads as under:

“Thus, on a consideration of the authorities mentioned above, the following principles emerge:

- (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 to 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 mouthpiece of the prosecution, but has to consider the broad 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.”

15. This proposition of law has been re-iterated in the case of *Asim Shariff Vs. National Investigation Agency* reported in (2019) 7 SCC 148 at paragraph Nos.18, 20, 23 and 25, it has been observed as under:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record.

20. After completion of the investigation, final report was submitted before the trial court against Accused 1 to 5 on 21-4-2017. At this

stage, the application filed by the appellant-accused under Section 227 CrPC seeking his discharge from the charge for the aforesaid offences came to be dismissed by the trial court, after recording cogent reasons and order of framing charge against him and other accused persons (Accused 1 to 4) under its order dated 12-1-2018. The extract of the order is as follows:

“22. It is needless to mention herein that this court has already taken the cognizance of offences alleged and it is needless to mention herein that obtaining of sanction is condition precedent as on the date of taking cognizance of the offences alleged. That the sanction having been obtained by the NIA at the time of cognizance of alleged offences and the cognizance having been already taken by this Court, this court is of the firm view that it is not good to pass any orders in respect of sanction for the simplest reason that passing of any orders with regard to genuineness or otherwise of sanction, the same would amount to an act of usurping of appellate or revisional jurisdiction. That the order of taking cognizance is intact even on this day. Therefore, for the reasons assigned in these paragraphs and in the preceding paragraphs of this order, NIA has established that materials adduced by it are sufficient enough to proceed with the case and that the same do give subjective satisfaction of existence of prima facie case of alleged offences. Therefore, the subject-matter of Point 2 deserves to be answered in the negative, that of Point 3 deserves to be answered in the affirmative and that of Point 4 in the negative and the said points are hereby answered accordingly. This court proceeds to pass the following:

Order

The application filed under Section 227 CrPC by Accused 5 is hereby dismissed. That the case on hand deserves to be proceeded with framing of charge in respect of alleged offences as mentioned in the charge-sheet as against all the accused persons.”

23. After going through the records and the judgment impugned before us, in the present facts and circumstances, we find no error in the judgment passed by the trial court and confirmed by the High Court by the impugned judgment dated 22-11-2018 [Asim Shariff v. NIA, 2018 SCC OnLine Kar 3775 : (2019) 1 KCCR 757] which calls for our interference.

25. With these observations, the appeal is dismissed. Pending application(s), if any, stand disposed of.”

16. A strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial, it will not prove the case of the prosecution. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge whether the accused has committed the offence or not?. Suspicion must be the suspicion which is premised on some material which commends itself to the Court as sufficient to entertain the prima facie view that the accused has committed the offence. This proposition of law has been laid down by

the Hon'ble Apex Court in the case of *Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Another* reported in 2019 SCC Online SC 588 wherein at paragraph No.23, it has been observed as under:

“At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure objective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the *prima facie* view that the accused has committed the offence.”

17. The Court below has analyzed the factual

matrix and has come to the conclusion that there is material and has rightly rejected the application and has come to the conclusion to frame the charge.

18. Keeping in view the principles laid down in the decisions quoted supra, if the factual matrixes are looked into there is ample material to frame the charge as against the accused in the present case. Though the learned counsel for the petitioner/accused contended that during the course of shooting of a film and to create a thrill in the said film, such stunt activities are shot, such activities are very much necessary but at the same time, it should not forget that it is not to know the objection which has to be kept into view but the other grounds that the accused has to take a precaution and safeguard and he should not play with the life of the stuntmen or the villains and if any such incident happens, they will lose the life. Under such circumstance, the said contention that at the time of shooting the film, such incidents are likely to happen and they are exposed to such risk is not going to be acceptable in law.

19. One more factor which has to be kept into view is that the evidence of the accused No.6 has been recorded. In his statement and the statement of the other witnesses, they disclose the fact that the said shooting of the jumping from the hovering helicopter

was not accepted and the entire shooting material was packed up and thereafter, the alleged incident has taken place. In the light of the said facts and circumstance of the cases, it is the contention of the learned counsel for the petitioner/accused that they have given the consent for the said risk and the provisions of Sections 80, 87 and 88 of IPC are attracted are also not going to be attracted in this behalf. They are the defense available to the accused, it is he who has to establish.

20. Looking from any angle there are no good grounds to give the benefit under Sections 80, 87 and 88 of IPC. That is the matter which has to be kept open to the Court below at the time of final adjudication to determine whether the said provisions are attracted and benefit can be given to the accused.

21. Taking into consideration of the above said facts and circumstances, I am of the considered opinion that the petitioner has not made out any good grounds so as to interfere with the order of the trial Court. The order of the trial Court deserves to be confirmed. The revision petition is being devoid of merits, the same is liable to be dismissed and accordingly, it is *dismissed*.

However, the observation which has been made in disposal of this petition will not come in the way of final disposal of the case.

The stay application is *disposed off*.