A.F.R.

Reserved on : 19.07.2022
Delivered on : 18.08.2022

Court No. - 82

Case :- CRIMINAL REVISION No. - 2660 of 2022

Revisionist :- Gaurav @ Govind
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Raghawendra Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

The present revision has been preferred with a prayer to allow this revision and quash/set aside the order dated 26.04.2022 passed by learned Additional Sessions Judge-14, Aligarh in Sessions Trial No.942 of 2022 (State of U.P. Vs. Gaurav @ Govind) arising out of Case Crime No.74 of 2021, under Section 302 I.P.C., Police Station Aligarh Junction, District Aligarh.

2. Portal/Pointsman, Mukesh Kumar and Deputy Superintendent of Police, Hathras Railway Station were informed on 26.10.2021 about unidentified dead body laid down near platform no.2, up line to the out post of the G.R.P. Hathras Junction. The inquest was conducted on the body of the deceased on 26.10.2021 and *Panchnama* was prepared and thereafter the postmortem was also conducted on 26.10.2021, which indicates that the deceased died due to shock and haemorrhage as a result of antemortem injury.

3. The family members of the deceased reached at the place of occurrence, where inquest was prepared by the concerned police station. The report was registered under Section 174(1) of the Code of Criminal Procedure. After conducting *Panchnama*, postmortem report and detailed

accident report were submitted on 26.10.2021. The brother of deceased, lodged a report on 28.10.2021 mentioning therein that he had come to Aligarh on 28.10.2021 to take postmortem report and while he was sitting in waiting room of Aligarh Railway Station, he heard from one Omjeet @ Chhotu, son of Kishori Lal that he was sitting in General Bogie of Unchahar Express from Fafund Railway Station on 25.10.2021, which was going to Chandigarh, one Gaurav @ Govind, a Mechanic of Bike met him in the train, after sometime, there was quarrel at Hathras Railway Station between a boy (deceased) and Gaurav and the boy was thrown from the train by accused.

4. The first information report was lodged on 28.10.2021, under Section 302 I.P.C. at G.R.P. Aligarh Junction, Aligarh. The investigation was conducted and statement of complainant as well as other witnesses was recorded under Section 161 Cr.P.C. and charge sheet was filed against the applicant on 20.12.2021 before the Additional Chief Judicial Magistrate, Aligarh, under Section 302 I.P.C. The cognizance was taken and charges were framed.

5. The applicant has challenged the charge sheet dated 26.04.2022, framed by Additional District and Sessions Judge-14, Aligarh.

6. It has been submitted by Sri Yogendra Singh, learned counsel for the revisionist that there are two F.I.Rs. in the present case and two investigations were carried out by the Police but no police report under Section 173(2) Cr.P.C. has been submitted before Chief Judicial Magistrate with respect to the information and the charges have been framed in

pursuance of the second F.I.R., which is not legally sustainable. He has submitted that for the same cause of action, it is the second F.I.R., therefore, proceeding initiated for framing the charge dated 26.04.2022 by the Additional District and Sessions Judge, Aligarh, is bad in the eyes of law and according to his submission investigation of second F.I.R. is bad in the eyes of law, whereas, the first report should be taken into consideration. He has further submitted that the materials collected under Section 302 I.P.C. against the applicant, is based on hearsay witness. He has relied upon the judgment passed by High Court of Madras (Madurai Bench) in the case of **Manohari Vs. The District Superintendent of Police** reported in **2018 (2) LW (Cri) 522, Rhea Chakraborty Vs. State of Bihar and others** reported in **2020 (0) SC 490** and **Radha Mohan Singh @ Lal Saheb and others Vs. State of U.P.** reported in **2006 (2) SCC 450**.

7. On the other hand, Sri Rupak Chaubey, learned A.G.A. for the State-opposite party has opposed and submitted that there is only one F.I.R., which was registered on 28.10.2021, as Case Crime No.74 of 2021, under Section 302 I.P.C., Police Station G.R.P. Aligarh Junctiion, District Aligarh. The information tendered by Portal/Pointsman, Mukesh Kumar and police authority dated 26.10.2021 that an unknown dead body was lying near railway line, cannot be termed as F.I.R. and therefore, the police authority has rightly chosen not to lodge the F.I.R. upon receiving such information. He has further submitted that the preparation of inquest report under Section 174 Cr.P.C. regarding the death of deceased, postmortem examination and detailed accident report were, in fact, in the nature of inquiry and it cannot be equated with the

investigation contemplated under Section 157 Cr.P.C. which commenced after lodging of F.I.R. under Section 154 Cr.P.C. Moreover, this aspect cannot be considered when the trial has been commenced and charges have been framed and trial court bring the evidence on the basis of material on record. There is ground for presuming that the accused has committed an offence and the Court framed the charge even strong suspension based on material on record.

8. Sri Rupak Chaubey, learned A.G.A. has further submitted that there is statement under Section 161 Cr.P.C. of witness, namely, Omjeet @ Chhotu, who had stated that he himself had witnessed the incident, wherein, it is mentioned that the revisionist had pushed out the deceased from running train which resulted homicidal death of the deceased. The statement of other witnesses recorded in the investigation also support this allegation.

9. Heard Sri Yogendra Singh, learned counsel for the revisionist and Sri Rupak Chaubey, learned A.G.A. for the State-opposite party.

10. Section 154 Cr.P.C. deals with information in cognizable offence for lodging F.I.R. Section 154 Cr.P.C. which stipulates that there must be an information relating to the commission of cognizable offence and the information can be termed as F.I.R., there is particular condition in respect of F.I.R. that there must be information of cognizable offence. When the Portal/Pointsman, Mukesh Kumar, Railway Authority, informed the Police regarding lying of a dead body near railwayline, it does not disclose commission of any cognizable offence.

Therefore, the said information entered in G.D. cannot termed as F.I.R. The inquest was conducted in terms of Section 174 Cr.P.C. and police had rightly chosen not to lodge any F.I.R. on such information. The said view is enunciated in the Judgment passed by Hon'ble Supreme Court in the case of **Patai alias Krishna Kumar Vs. State of Uttar Pradesh** reported in **(2010) 4 SCC 429**. Paragraph No.16 of the said judgment is relevant and is quoted below:-

> *"16. In order for a message or omunication to be qualified to be a first information report, there must be something in the nature of a complaint or accusation or at least some information of the crime given with the object of settting the police or criminal law into motion. It is true that a first information report need not contain the minutest details as to how the offence had taken place nor it is required to contain the names of the offenders or the witnesses. But it must at least contain some information about the crime committed as also some information about the manner in which the cognizable offence has been committed. A cryptic message recording an occurrence cannot be termed as a first information report."*

11. Hon'ble Supreme Court has held that the proceeding under Section 174 Cr.P.C. is for the purpose of discovering the cause of death, and the evidence taken was very short. When the body cannot be found or has been buried, there can be no investigation under Section 174 Cr.P.C. The scrutiny done under Section 174 Cr.P.C. cannot be equated with the information under Section 154 Cr.P.C. which is meant for cognizable offence. Inquiry under Section 174 Cr.P.C. is more distinct.

12. The case of inquiry under Section 174 and 154 is considered in case of **Manoj Kumar Sharma and others Vs. State of Chhattisgarh and another** reported in **(2016) 9 SCC 1**. Paragraph nos.19, 20, 21 and 22 of the said judgment are relevant, which are quoted below:-

> *"19. The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 of the Code. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. The procedure under Section 174 is for the purpose of discovering the cause of death, and the evidence taken was very short. When the body cannot be found or has been buried, there can be no investigation under Section 174. This section is intended to apply to cases in which an inquest is necessary. The proceedings under this section should be kept more distinct from the proceedings taken on the complaint. Whereas the starting point of the powers of the police was changed from the power of the officer in charge of a police station to investigate into a cognizable offence without the order of a Magistrate, to the reduction of the first information regarding commission of a cognizable offence, whether received orally or in writing, into writing. As such, the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any*

investigation by the police. The purpose of registering FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report and only after registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. In ***George v. State of Kerala****, it has been held that the investigating officer is not obliged to investigate, at the stage of inquest, or to ascertain as to who were the assailants. A similar view has been taken in* ***Suresh Rai v. State of Bihar*** *.*

20. In this view of the matter, Sections 174 and 175 of the Code afford a complete Code in itself for the purpose of "inquiries" in cases of accidental or suspicious deaths and are entirely distinct from the "investigation" under Section 157 of the Code wherein if an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall proceed in person to the spot to investigate the facts and circumstances of the case. In the case on hand, an inquiry under Section 174 of the Code was convened initially in order to ascertain whether the death is natural or unnatural. The learned Senior Counsel for the appellants claims that the earlier information regarding unnatural death amounted to FIR under Section 154 of the Code which was investigated by the police and thereafter the case was closed.

21. On a careful scrutiny of materials on record, the inquiry which was conducted for the purpose of ascertaining whether the death is natural or unnatural cannot be categorised under information relating to the commission of a cognizable offence within the meaning and import of Section 154 of the Code. On information received by Police Station Mulana, the police made an inquiry as

contemplated under Section 174 of the Code. After holding an inquiry, the police submitted its report before the Sub-Divisional Magistrate, Ambala stating therein that it was a case of hanging and no cognizable offence is found to have been committed. In the report, it was also mentioned that the father of the deceased, R.P. Sharma (PW 1) does not want to take any further action in the matter. In view of the above discussion, it clearly goes to show that what was undertaken by the police was an inquiry under Section 174 of the Code which was limited to the extent of natural or unnatural death and the case was closed. Whereas, the condition precedent for recording of FIR is that there must be an information and that information must disclose a cognizable offence and in the case on hand, it leaves no matter of doubt that the intimation was an information of the nature contemplated under Section 174 of the Code and it could not be categorised as information disclosing a cognizable offence. Also, there is no material to show that the police after conducting investigation submitted a report under Section 173 of the Code as contemplated, before the competent authority, which accepted the said report and closed the case.

22. In view of the above, we are of the opinion that the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence and in the case on hand there was no FIR registered with Police Station Mulana neither any investigation nor any report under Section 173 of the Code was submitted. Therefore, challenge to the impugned FIR under Crime No. 194 of 2005 registered by Police Station Bhilai Nagar could not be assailed on the ground that it was the second FIR in the garb of which investigation or fresh investigation of the same incident was initiated."

13. Section 2 (H) Cr.P.C. includes all the proceedings under the Code for collection of evidence by a Police Officer or by any person other than the Magistrate, who is authorised by the Magistrate. Section 157 Cr.P.C. prescribed the procedure for investigation. Section 174 deals with the inquest proceeding upon receiving information by the police that a person has committed suicide or has been killed in an accident or has died under circumstances raising suspicion that some other person has done some offence. The body of inquest proceeding is to ascertain the apparent cause of death. The inquest proceedings are in the nature of inquiry in case of accident which is entirely distincts from investigation under Section 157 Cr.P.C. Under Section 157 Cr.P.C., the Officer in Charge of a Police Station having reason to suspect the commission of an offence for which he is empowered to investigate, proceeds on the spot. The investigation is done by the Police after receiving information of a cognizable offence and investigation can be done only under Section 157 Cr.P.C. which results in submission of police report. However, during the inquest proceeding, the Police Officer finds commission of cognizable offence then he can lodge F.I.R. and can investigate further in terms of Section 157 Cr.P.C.

14. In the present case, the information for cognizable offence was given by the informant on 28.10.2021 and thereafter, the police started investigation because act of commission of murder was disclosed in the F.I.R.

15. Insofar as the charge is concerned, it is framed after submission of charge sheet which contains the F.I.R. and statement under Section 161 Cr.P.C., the cognizable offence is

made out and charges have been framed on the basis of the material collected by the Investigating Officer. While framing the charge, the court below has to consider *prima facie* case even if the Court thinks that the accused might have committed the offence it would frame the charge at the stage of framing of charge and probative value of materials on record, cannot be gone into. Paragraph Nos. 26 to 32 of the judgment passed by Hon'ble the Supreme Court in the case of **State of Maharashtra and others Vs. Som Nath Thapa and others** reported in **(1996) 4 SCC 659**, are relevant which are quoted below:-

> ***"26.*** *Shri Ram Jethmalani has urged that despite some variation in the language of the three pairs of sections, which deal with the question of framing of charge or discharge, being relatable to either a sessions trial or trial of a warrant case or a summons case, ultimately converge to a single conclusion, namely, that a prima facie case must be made out before a charge can be framed. This is what was stated by a two-Judge Bench in R.S. Nayak v. A.R. Antulay.*
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> ***27.*** *Let us note the three pairs of sections Shri Jethmalani has in mind. These are Sections 227 and 228 insofar as sessions trial is concerned; Sections 239 and 240 relatable to trial of warrant cases; and Sections 245(1) and (2) qua trial of summons cases. They read as below:*
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> > *"227. Discharge.—If, upon consideration of the record of the case and the documents submitted therein, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall*

discharge the accused and record his reasons for so doing.

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, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for 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 sub-section (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.

239. When accused shall be discharged.—If, upon considering the police report and the document sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.—(1) If, upon such consideration, examination, if any, and hearing the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

245. When accused shall be discharged.—If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

***28.** Before adverting to what was stated in Antulay case let the view expressed in State of Karnataka v. L. Muniswamy be noted. Therein, Chandrachud, J. (as he then was) speaking for a three-Judge Bench stated (at SCR p. 119 : SCC p. 704) that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper*

consideration of material warranting such order was emphasised.

29. *What was stated in this regard in Stree Atyachar Virodhi Parishad case which was quoted with approval in paragraph 78 of State of W.B. v. Mohd. Khalid is that what the court has to see, while considering the question of framing the charge, is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into.*

30. *In Antulay case Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.*

31. *Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (emphasis supplied). In Law*

Lexicon by P. Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn.

32. *The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."*

16. The same view has been taken by Hon'ble the Supreme Court in the case of **Bhawna Bai Vs. Ghanshyam and others** reported in **(2020) 2 SCC 217**. Paragraph nos.16 and 17 of the said judgment are relevant and are quoted below:-

*"**16.** After referring to Amit Kapoor in Dinesh Tiwari v. State of U.P., the Supreme Court held that for framing charge under Section 228 CrPC, the Judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the Judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.*

17. *As discussed above, in the present case, upon hearing the parties and considering the allegations in the charge-sheet, the learned Second Additional Sessions Judge was of the opinion that there were sufficient grounds for presuming that the accused*

> *has committed the offence punishable under Section 302 IPC read with Section 34 IPC. The order dated 12-12-2018 framing the charges is not a detailed order. For framing the charges under Section 228 CrPC, the Judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima facie case is to be seen. As held in Kanti Bhadra Shah v. State of W.B., while exercising power under Section 228 CrPC, the Judge is not required to record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge-sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused-Respondents 1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-Respondents 1 and 2 under Section 302 IPC read with Section 34 IPC and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside"*

17. Sri Yogendra Singh, learned counsel for the revisionist has relied upon the judgment of **Manohari Vs. The District Superintendent of Police (*supra*)**, the said judgment is not applicable in the present case. In the said case, the information under Section 174 Cr.P.C. was given and the Court has observed that on conclusion of the investigation, the police shall file a final report under Section 173(2) Cr.P.C. only before the Jurisdictional Magistrate and not before the Executive Magistrate. This will apply in both cases, where the final report is positive report or is a closure report.

18. In the present case, there is only one F.I.R. registered on 28.10.2021, as Case Crime No.74 of 2021, under Section 302 I.P.C., Police Station G.R.P. Aligarh Junction, District Aligarh. The earlier information by Portal/Pointsman, Mukesh Kumar to the Police dated 26.10.2021, was an information regarding unknown dead body lying near railway line which can be termed as F.I.R. Preparation of inquest under Section 174 Cr.P.C. regarding death of the deceased, postmortem examination and detailed accident report was in fact in the nature of inquiry and it cannot be equated with the investigation contemplates under Section 157 Cr.P.C. which commenced after lodging of F.I.R. under Section 154 Cr.P.C.

19. In view of the aforesaid discussion, it is obvious that the F.I.R. lodged on 28.10.2021 for offence which is cognizable, therefore, investigation was conducted under Section 157 Cr.P.C. The first report dated 26.10.2021 was an information tendered by Portal/Pointsman, Mukesh Kumar, the railway authority regarding an unknown dead body which was lying near railway line and the same cannot be termed as F.I.R. The preparation of inquest report under Section 174 Cr.P.C. regarding death of deceased, postmortem examination and detailed accident report, was in fact, in the nature of inquiry and it cannot be equated with investigation contemplated under Section 157 Cr.P.C.

20. The charges have been framed after collecting material on record and court below had no option but to frame the charge.

21. In view of the aforesaid discussion, the revision lacks merit and it is **dismissed**.

22. No order as to costs.

Order Date :- 18.08.2022

Atul

(Brij Raj Singh, J.)

Digitally signed by ATUL KUMAR SRIVASTAVA
Date: 2022.08.19 13:17:01 IST
Reason:
Location: High Court of Judicature at Allahabad