A BHARAT PARIKH

v.

C.B.I. & ANR.

(Criminal Appeal No. 1076 of 2008)

JULY 14, 2008

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[ALTAMAS KABIR AND DR. MUKUNDAKAM SHARMA, JJ]

Code of Criminal Procedure, 1973:

C *ss. 207, 227 and 482 – Prayer of accused for discharge after charges were framed – HELD: At the stage of framing the charge roving and fishing inquiry is impermissible and submissions of accused have to be confined to the material produced by investigating agency – Documents subsequently* D *filed cannot be relied upon to re-open the proceedings once charge has been framed or for invocation of power of High Court u/s 482.*

In the instant appeal arising out of rejection of accused's application seeking to reopen the proceedings E **and his discharge after the charges had been framed, the questions for consideration before the Court were: (i) whether having framed charges against an accused, a Magistrate has the jurisdiction in law to recall such order on the ground that the prosecution had failed to comply** F **with the provisions of Section 207 of the Code of Criminal Procedure" and (ii) whether in exercise of its inherent powers, the High Court could quash the charges framed and acquit the accused on account of such non-compliance with the provisions of Sections 207 and 238 of the** G **Code**

Dismissing the appeal, the Court

HELD: 1.1 Having regard to the language of Sections 207 and 227 of the Code of Criminal Procedure, 1973, while

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framing charges, the trial court can only look into the materials produced by the prosecution while giving an opportunity to the accused to show that the said materials were insufficient for the purpose of framing charge. [para 15] [956-F & G] A

State of Orissa vs. Debendra Nath Padhi **(2005) 1 SCC 568;** *Ratilal Bhanji Mithani vs. State of Maharashtra* **AIR 1979 SC 94; and** *State of Andhra Pradesh vs. Golconda Linga Swamy and Anr.* **AIR 2004 SC 3967 – relied on.** B

Satish Mehra vs. Delhi Administration **(1996) 9 SCC 766 – overruled.** C

1.2 The question of discharge by the Magistrate after framing of charge does not, therefore, arise, notwithstanding the submissions advanced with regard to denial of natural justice and a fair and speedy trial as contemplated under Article 21 of the Constitution, which have no application whatsoever to the facts of the instant case. [para 15] [957-A & B] D

P. Ramachandra Rao vs. State of Karnataka, **(2002) 4 SCC 578;** *Abdul Rehman Antulay vs. R.S. Nayak* **(1992) 1 SCC 225;** *Dhananjay Kumar Singh vs. State of Rajasthan* **2006 Crl. L.J. 3873 – held inapplicable.** E

2.1 With regard to the High Court's powers to look into materials produced on behalf of or at the instance of the accused for the purpose of invoking its powers under Section 482 of the Code for quashing the charges framed, it has to be kept in mind that after the stage of framing charge, evidence has to be led on behalf of the prosecution to prove the charge if an accused pleads not guilty to the charge and claims to be tried. It is only in the exceptional circumstances that criminal proceedings may be quashed to secure the ends of justice, but such a stage will come only after evidence is led, particularly, when the prosecution has produced sufficient material for charges F G H

A **to be framed. [para 16] [957-B,C & D]**

State of Haryana vs. Bhajan Lal **1992 Suppl. (1) SCC 335 – relied on.**

2.2 At the stage of framing charge roving and fishing
B **inquiry is impermissible and a mini trial cannot be conducted at such stage; and submissions on behalf of the accused have to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the documents subsequently produced**
C **by the prosecution on the order of the Court, but the same cannot be relied upon to re-open the proceedings once charge has been framed or for invocation of the High Court's powers under Section 482 of the Code. [para 16] [957-E & F]**

D **3. No interference is warranted with the orders passed by the Special Judge or the High Court. [para 17] [957-G]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
E No. 1076 of 2008

From the Judgment/Order dated 21.9.2006 of the High Court of Judicature at Bombay in Crl. Application No. 2328 of 2006

Amit Desai, Bhargava V. Desai, Rahul Gupta, Reema Sharma and Mike Desai for the Appellant.
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M. Parasaran, A.S.G. Ranjan Narayan, B.K. Prasad, P. Parmeswaran and Ravindra Keshavrao Adsure for the Respondents.

The Judgment of the Court was delivered by

G **ALTAMAS KABIR,J.** 1. Leave granted.

2. Two legal propositions fall for consideration in this appeal. The first proposition deals with the question as to whether having framed charges against an accused, a Magistrate has the jurisdiction in law to recall such order on the ground that the
H prosecution had failed to comply with the provisions of Section

207 of the Code of Criminal Procedure. An ancillary question will also arise as to whether such failure would render the framing of charge void.

3. The second proposition raises a question as to whether in exercise of its inherent powers, the High Court could quash the charges framed and acquit the accused on account of such non-compliance with the provisions of Sections 207 and 238 of the aforesaid Code.

4. The appellant herein is the original accused No.5 in a special case pending before the learned Special Judge, Mumbai in which charge was framed against him and the other accused persons on 13th December, 1996 under Sections 120-B read with Sections 420, 468, 471, 477-A of the Indian Penal Code and Section 13(2) read with Section 13(1)(d)of the Prevention of Corruption Act, 1988. Though such charge had been framed against the appellant on 13th December, 1996, after about five years an application was made on behalf of the appellant in 2001, before the Special Court seeking directions for production of certain documents in the custody of the prosecution. By order dated 27th August, 2001, the said application was allowed and the prosecution was directed to produce all the documents referred to in the statement of one Mr. P.K.R.K. Menon made on 24th February, 1993. The said documents were ultimately produced in 2002. Thereafter, the appellant filed an application for re-opening the proceedings and for discharge, which was rejected by the learned Special Judge by his order dated 1st April, 2006.

5. In rejecting the said application, the learned Special Judge relied primarily on the decision of this Court in the case of Ratilal Bhanji Mithani vs. State of Maharashtra [AIR 1979 SC 94] in which this Court had held that once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code of Criminal Procedure to cancel such charge and to discharge the accused. It was also observed that once charge has been framed and the accused pleads not guilty,

A the Magistrate is required to proceed with the trial to its logical end. In other words, once a charge is framed in a warrant case instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused. He can, thereafter, either acquit or convict the accused.

B 6. The learned Special Judge also relied another decision of this Court in State of Andhra Pradesh vs. Golconda Linga Swamy and Anr. [AIR 2004 SC 3967], where similar views have been expressed.

C 7. Aggrieved by the said order of the learned Special Judge, the appellant filed an application under Section 482 of the aforesaid Code before the Bombay High Court for quashing the proceedings of the Special case pending before the learned Special Judge, Mumbai and also for quashing the order dated 1st April, 2006, whereby the learned Special Judge D had rejected the appellant's application for discharge.

8. Taking a view, which was similar to that expressed by the learned Special Judge, the Bombay High Court dismissed the revisional application upon holding that there had been sufE ficient compliance by the prosecution with the requirement of law and that failure to produce the documents referred to in the order dated 27th August, 2001 would not nullify the proceedings from the stage of framing of charge. On a reference to the decision in Ratilal Bhanji Mithani's case (supra), the High Court F took the view that since charge had been framed, the case would have to go for trial as no case had been made out for exercising jurisdiction under Section 482 of the Code at the said stage.

9. In this appeal, the appellant has assailed the orders G passed by the learned Special Judge, as also the High Court.

10. On behalf of the appellant it was submitted by learned senior counsel, Mr. Amit Desai, that the High Court had misapplied the decision in Ratilal Bhanji Mithani's case (supra) as it was the case of the appellant that non-compliance of the provi-

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sions of Section 207 of the Code of Criminal Procedure had vitiated the entire proceedings, including framing of charge. He submitted that such non-compliance was antithetical to the concept of a fair and speedy trial as contemplated in Article 21 of the Constitution as was held in the case of Satish Mehra vs. Delhi Administration (1996) 9 SCC 766. It was submitted that the entire proceedings were vitiated on such score as well. It was urged that the High Court had erred in not exercising its inherent power under Section 482 of the Code to quash the entire proceedings, including framing of charge.

11. In support of his aforesaid submission, Mr. Desai referred to the decision of a seven-Judge Bench of this Court in P. Ramachandra Rao vs. State of Karnataka, (2002) 4 SCC 578, wherein the question of speedy trial had been considered and having regard to the views expressed in Abdul Rehman Antulay's case, (1992) 1 SCC 225, it was held that if the delay in concluding a trial was oppressive or unwarranted, it would violate Article 21 of the Constitution and such trial or such proceedings would be liable to be terminated.

12. Reference was also made to a decision of a three-Judge Bench in State of Orissa vs. Debendra Nath Padhi, (2005) 1 SCC 568, wherein while called upon to answer the wider question as to whether at the time of framing charge the trial court can consider material filed by the accused, reference was disapprovingly made to an earlier two-Judges Bench decision in the case of Satish Mehra vs. Delhi Administration. In fact, the matter was heard on a reference as there was a conflict of views between two Benches of co-ordinate jurisdiction. In Satish Mehra's case (supra) it was held that at the time of framing of charge the trial court was competent to consider material produced on behalf of the accused in the light of Section 227 of the Code which provides for an opportunity of being heard to the accused so that he was not unnecessarily made to undergo the entire gamut of a trial which could be concluded at the time of framing of charge itself, if the trial court was satisfied upon the material produced both by the prosecution and the

A accused that there was no need to proceed to conduct the trial. The said view taken in Satish Mehra's case was, however, overruled in Debendra Nath Padhi's case.

13. Reference was lastly made to a decision of a single Judge of the Rajasthan High Court in Dhananjay Kumar Singh B vs. State of Rajasthan, 2006 Crl.L.J. 3873, where the principles of natural justice were held to be an integral part of a fair trial in the context of Article 21 of the Constitution and the Universal Declaration of Human Rights adopted by the United Nations on 10th December, 1948.

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14. Appearing for the Central Bureau of Investigation (hereinafter referred to as 'CBI'), learned Additional Solicitor General, Mr. Mohan Parasaran, submitted that a similar application (Criminal Application No.1129 of 1997) made by the appellant had been D dismissed on 2nd November, 1998, as none of the parties were represented at the time of hearing of the application. He also submitted that having regard to the decision in Debendra Nath Pathi's case(supra) and also in Ratilal Bhanji Mithani's case (supra), the earlier ambiguity had been removed and it had been clearly laid down that not only could the trial court not recall its E order framing charge, which would result in re-opening of the proceedings, but it could not also consider the material produced on behalf of the accused at the time of framing charge.

15. Of the two propositions raised in this appeal, the first F proposition has been completely answered in Debendra Nath Padhi's case (supra) regarding the trial court's power to recall its order framing charge against an accused. Having regard to the language of Sections 207 and 227 of the Code of Criminal Procedure, while framing charges the trial court can only look into the materials produced by the prosecution while giving an G opportunity to the accused to show that the said materials were insufficient for the purpose of framing charge. The decision in Satish Mehra's case (supra) having been overruled in Debendra Nath Padhi's case (supra) the contention of Mr. Desai that the Magistrate should have re-opened the matter on the basis of H

the documents produced by the prosecution at the instance of the accused, is no longer res-integra. The question of discharge by the learned Magistrate after framing of charge does not, therefore, arise, notwithstanding the submissions advanced with regard to denial of natural justice and a fair and speedy trial as contemplated under Article 21 of the Constitution, which have no application whatsoever to the facts of this case.

16. With regard to the second proposition regarding the High Court's powers to look into materials produced on behalf of or at the instance of the accused for the purpose of invoking its powers under Section 482 of the Code for quashing the charges framed, it has to be kept in mind that after the stage of framing charge evidence has to be led on behalf of the prosecution to prove the charge if an accused pleads not guilty to the charge and/or charges and claims to be tried. It is only in the exceptional circumstances enumerated in State of Haryana vs. Bhajan Lal 1992 Suppl.(1) SCC 335, that a criminal proceeding may be quashed to secure the ends of justice, but such a stage will come only after evidence is led, particularly when the prosecution had produced sufficient material for charges to be framed. As observed in Debendra Nath Padhi's case (supra) at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused has to be confined to the material produced by the investigating agency. The accused will get an opportunity to prove the documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to re-open the proceedings once charge has been framed or for invocation of the High Court's powers under Section 482 of the Code of Criminal Procedure.

17. Accordingly, no interference is warranted with the orders passed by the learned special Judge or the High Court, and the appeal is, therefore, dismissed.

R.P. Appeal dismissed.