

CASE NO.:
Appeal (crl.) 1508 of 2003

PETITIONER:
State of Maharashtra

RESPONDENT:
Salman Salim Khan & Anr.

DATE OF JUDGMENT: 18/12/2003

BENCH:
N. Santosh Hegde & B.P. Singh

JUDGMENT:
J U D G M E N T

2 4615 2003

SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

The entire exercise which culminated in the impugned judgment of the High Court, in our opinion, was an exercise in futility and sheer waste of time and money.

The law governing the trial of criminal offences provides for alteration of charges at any stage of the proceedings depending upon the evidence adduced in the case. If the trial is being held before a Court of Magistrate it is open to that court at any stage of trial if it comes to the conclusion that the material on record indicates the commission of an offence which requires to be tried by a superior court, it can always do so by committing such case for further trial to a superior court as contemplated in the Code of Criminal Procedure (the Code). On the contrary, if the trial is being conducted in a superior court like the Sessions Court and if that court comes to the conclusion that the evidence produced in the said trial makes out a lesser offence than the one with which the accused is charged, it is always open to that court based on evidence to convict such accused for a lesser offence. Thus, arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise as has happened in this case proceedings get protracted by the intervention of the superior courts.

Now coming to the present appeal :

The respondent herein was originally charged of an offence punishable under sections 304A, 279, 337, 338, 427 IPC and 134(a)(b) read with sections 181 and 185 of the Motor Vehicles Act, 1998 as also under section 66(1)(b) of the Bombay Prohibition Act. All these offences are triable by a court of Magistrate of competent jurisdiction. These charges against the respondents were registered based on a complaint lodged by one Shri Ravindra Patil, a Police Constable attached to the Security Department and posted with the respondent to look after his security.

It is the case of the prosecution that on the night intervening the 27th and 28th September, 2002, the respondent drove his car under the influence of alcohol, in a rash manner

and caused the death of one person and caused grievous injuries to four others who happened to be sleeping on the footpath. A few days later the chargesheet filed as above, came to be modified based on the additional statement of the complainant, and instead of section 304A IPC, section 304 Part II, IPC was substituted which is an offence exclusively triable by a Court of Sessions hence the learned Magistrate who took cognizance of the offence, committed the said case to the Court of Sessions for trial.

It is to be noted that the respondent was granted bail even after the charge was modified to include section 304 Part II, IPC. On the framing of the charge under section 304 Part II, IPC, the respondent filed Criminal Application No.463 of 2003 in the Court of Sessions alleging that the facts as narrated in the complaint did not constitute an offence punishable under section 304 Part II, IPC and if at all, only a charge for an offence punishable under section 304A could be framed against him, apart from other offences triable by the court of Magistrate. Said application came to be rejected by the Sessions Court and the learned Sessions Judge then proceeded to frame charges; one of which was for an offence punishable under section 304 Part II, IPC.

Being aggrieved by the dismissal of his application and the consequential framing of charge under section 304 Part II, the respondent preferred a criminal application under section 482 of the Code before the Criminal Appellate Bench of the High Court of Judicature at Bombay. The High Court by the impugned order has allowed the said application and quashed the order made by the learned Sessions Judge framing charge under section 304 Part II, IPC against the respondent herein while it maintained the other charges and directed the appropriate Magistrate's court to frame de novo charges under various sections mentioned in the said impugned order of the High Court including one under section 304A IPC.

It is against the said order of the High Court, the State of Maharashtra has preferred this appeal. Mr. Ashwani Kumar, learned senior counsel appearing for the State of Maharashtra contended that a perusal of the original complaint as supplemented by the additional statement of the complainant clearly shows that the respondent drove his vehicle on the day of the accident without holding a motor driving licence, under the influence of alcohol, in a rash and negligent manner and failed to contain the speed of the vehicle in spite of being cautioned by the complainant, thus causing the death of one person and grievous injuries to four others. Therefore, it is clear, at this stage at least, that the respondent had the knowledge that by such act of his, he would be causing death of the victim if he meets with an accident. Such knowledge, according to learned counsel, is evident from the conduct of the respondent as could be seen from the averment in the complaint itself. He also contended that the High Court in a petition under section 482 of the Code could not have weighed the material that was before the court nor could it have tested the veracity of the statement of the complainant at this stage to come to the conclusion that the principal offence would not fall under section 304, Part II, IPC. He further contended that by doing so, the High Court has pre-judged the issue and by giving a conclusive finding in this regard has pre-empted the courts below from assessing the evidence during the trial and if need be, from properly altering the charges.

Mr. Harish N Salve, learned senior counsel representing

the respondent-accused, per contra, contended that from a plain reading of the complaint which is the only material available at this stage for the purpose of framing charges, no reasonable person could ever have come to the conclusion that the respondent ever had any knowledge that by his act of driving the motor vehicle, he would cause such an act which would lead to the death of any person. He further submitted that from the material on record itself it is clear that if at all any act of the respondent is responsible for the death of the victim same cannot be termed anything other than a rash and negligent act punishable under section 304A. Learned senior counsel further submitted that since the learned Sessions Judge while rejecting the application of the petitioner filed before it in altering the charge from section 304 Part II to 304A, IPC, had itself passed a lengthy order which indicated that the said court had formed a conclusive opinion as to the nature of offence which definitely would have prejudiced the case of the respondent in the trial, the High Court was left with no choice but to decide this question as to the nature of offence if at all committed by the respondent.

But for the fact that two courts below i.e. the Sessions Court and the High Court having gone into this issue at length and having expressed almost a conclusive opinion as to the nature of offence, we would not have interfered with the impugned order of the High Court because, as stated above, neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under section 304A or section 304 Part II, IPC except for the fact that the forum trying the charge might have been different, which by itself, in our opinion, would not cause any prejudice. This is because at any stage of the trial it would have been open to the concerned court to have altered the charge appropriately depending on the material that is brought before it in the form of evidence. But now by virtue of the impugned judgment of the High Court even if in the course of the trial the Magistrate were to come to the conclusion that there is sufficient material to charge the respondent for a more serious offence than the one punishable under section 304A, it will not be possible for it to pass appropriate order. To that extent the prosecution case gets pre-empted.

We are of the opinion that though it is open to a High Court entertaining a petition under section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. By relying upon the decisions of the apex Court most of which were with reference to appeals arising out of convictions, we think the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under section 304 Part II, IPC, therefore, so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage. At the same time we are also in agreement with the arguments of learned counsel for the respondents that even the Sessions Court ought not to have expressed its views in such certain terms which indicates that the Sessions Court had taken a final decision in regard to the material to establish a charge punishable under section 304 Part

II, IPC.

Therefore, we think it appropriate that the findings in regard to the sufficiency or otherwise of the material to frame a charge punishable under section 304, Part II, IPC of both the courts below should be set aside and it should be left to be decided by the court trying the offence to alter or modify any such charge at an appropriate stage based on material produced by way of evidence.

The next question which then requires our consideration is whether in view of our above finding, the charge framed by the Sessions Judge for an offence punishable under section 304 Part II, IPC be sustained or one under section 304A as has been done by the High Court, should be retained ?

We have been informed that pursuant to the judgment of the High Court, the Metropolitan Magistrate, 12th Court, Bandra, Mumbai, has already framed fresh charges under section 304A and other provisions mentioned hereinabove and the trial has commenced. Since any interference at this stage would not further the cause of justice and would lead only to delay the course of justice, we think it appropriate that the proceedings before the said Magistrate's Court should continue and the trial should proceed on the basis of the charges framed by it but we make it very clear that at any appropriate stage if the Magistrate comes to the conclusion that there is sufficient material to charge the respondent for a more serious offence than the one punishable under section 304A, he shall proceed to do so without in any manner being hindered or influenced by the observations or findings of the High Court in the impugned order or by the order of the Sessions Court which framed the charge punishable under section 304 Part II, IPC. Such decision of the Magistrate shall be purely based on the material brought in evidence at the trial.

We make it clear that neither by sustaining the order of the High Court in remitting the trial to the court of Magistrate, nor by our observations in this judgment as to the acceptability or otherwise of the material now on record, we have expressed any opinion on the merits of the case. Whatever is observed by us in this judgment is solely for the purpose of disposal of this appeal.

With the above observations, this appeal is disposed of.