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tion under Section 31(2) has already been filed by the appellants in the Court of the learned Subordinate Judge, Patna no further proceedings can be taken in the High Court of Calcutta by reason of the injunction contained in Section 31(4). The short answer to this contention is that the application filed by the appellants in the Patna Court relates expressly to the agreement of September 26, 1973 and not to the agreement of December 30, 1975 in pursuance of which the award has been made. In other words, whereas the application in the Patna Court arises out of the agreement of 1973 the present proceedings in the Calcutta High Court arise out of the agreement of 1975. The subject-matter of the two proceedings being different, Section 31(4) can have no application and the Calcutta High Court is therefore competent to proceed with the matter before it.

6. For these reasons we confirm the judgment of the High Court and dismiss the appeal with costs.

(1977) 4 Supreme Court Cases 39

(BEFORE N. L. UNTWALIA AND P. N. SHINGHAL, JJ.)

STATE OF BIHAR .. Appellant ;

Versus

RAMESH SINGH .. Respondent.

Criminal Appeal No. 51 of 1977†, decided on August 2, 1977

Code of Criminal Procedure, 1973 (2 of 1974) — Sections 227 and 228 — Order to discharge accused or to proceed with trial — Tests and considerations to be applied by Court

Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence

†Appeal by Special Leave from the Judgment and Order dated February 18, 1976 of the Patna High Court in Criminal Review 699 of 1975.

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evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. If the scales as to the guilt or innocence of the accused are even at the conclusion of the trial, then on the theory of benefit of doubt the case must end in the acquittal of the accused; but if, on the other hand, the scales are even at the initial stage of making an order under Section 227 or Section 228, then in such a situation, ordinarily and generally the order will have to be made under Section 228 and not under Section 227. The test is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Where there is a prima facie evidence even though the person charged of an offence in the complaint might have a defence, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. (Para 5)

In the present case, the fact that the deceased died an unnatural death and there were injuries of burning on her person was not in doubt or dispute. The question to be decided at the trial would be whether the respondent had murdered her and set fire to the body or whether she committed suicide by setting fire to herself. This undoubtedly is a serious matter for decision at the trial and the discharge of the accused under Section 227 is not justified. (Paras 6 to 8)

Nirmaljit Singh Hoon v. *State of W. B.*, (1973) 3 SCC 753: 1973 SCC (Cri) 521 and *Chandra Deo Singh* v. *Prokash Chandra Bose*, (1964) 1 SCR 639: AIR 1963 SC 1430: (1963) 2 Cri LJ 397, *followed*.

S-M/3624/CR

Advocates who appeared in this case:

U. P. Singh and *S. N. Jha*, Advocates, for the Appellant;

B. P. Singh and *A. K. Srivastava*, Advocates, for the Respondent.

The Judgment of the Court was delivered by

UNTWALIA, J.—The respondent in this appeal by special leave is a Professor of Economics in Munshi Singh College, Motihari in the State of Bihar. At about 3.00 a.m. on November 26, 1973, Smt. Tara Devi, wife of the respondent, was found burning in the kitchen of his house. A 'hulla' was raised. Chandreshwar Prasad Singh, brother of Tara Devi, who is a Professor of Botany in the said College and lives nearby came to the scene of occurrence. It is said he found the respondent and his brother standing near the burning body of Tara Devi but not taking any steps to extinguish the fire. Tara Devi died apparently as a result of the extensive burn injuries on her person. A First Information Report was lodged by Chandreshwar Prasad Singh at the Police Station charging the respondent for having committed the offences under Sections 302 and 201 of the Penal Code. Eventually charge-sheet was submitted against him by the police and the case was committed to the Court of Session for trial of the respondent under Section 209 of the Code of Criminal Procedure, 1973 — hereinafter called the Code.

2. When the case was opened in the Court of the Third Additional Sessions Judge at Motihari in Sessions Trial 66 of 1975 by the Additional Public Prosecutor in accordance with Section 226 of the Code, a plea was raised on behalf of the respondent that there was not any sufficient ground for proceeding with the trial against him and he should be dis-

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charged in accordance with Section 227. The Additional Sessions Judge accepted the plea and discharged the accused by his order dated April 30, 1975. The State of Bihar — the appellant in this appeal, went in revision before the Patna High Court to assail the order aforesaid of the Sessions Court. The High Court by its order dated February 18, 1976 dismissed the revision. Hence this appeal.

3. It is neither necessary nor advisable for us to mention in any great detail the facts of the prosecution case against the respondent or refer to all the materials and the evidence which may be produced by the prosecutor when a trial proceeds in the Sessions Court. Unnecessary details in that regard have got to be avoided so that it may not prejudice either the prosecution case of the appellant or the defence of the respondent. Since for the brief reasons to be stated hereinafter we are going to set aside the orders of the Courts below and direct the trial to proceed against the respondent, we would like to caution that nothing which may have to be said in support of our order in this judgment is meant and should be understood to prejudice in the least the case of either party at the trial.

4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

. . . . . (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a

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strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

5. In *Nirmaljit Singh Hoon* v. *State of West Bengal*[1] — Shelat, J. delivering the judgment on behalf of the majority of the Court referred at page 79 of the report to the earlier decisions of this Court in *Chandra Deo Singh* v. *Prokash Chandra Bose*[2] — where this Court was held to have laid down with reference to the similar provisions contained in Sections 202 and 203 of the Code of Criminal Procedure, 1898 "that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused". Illustratively, Shelat, J., further added "Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case".

6. The fact that Tara Devi died an unnatural death and there were burn injuries on her person does not seem to be in doubt or dispute. The question to be decided at the trial would be whether the respondent, as is the prosecution case, had murdered her and set fire to her body or whether she committed suicide by herself setting fire to it. This undoubtedly is a serious matter for decision at the trial. But at the stage of framing the charge, copious reference to Modi's *Medical Jurisprudence* and judging the post-mortem report of a Doctor who performed the autopsy over the dead body of the lady meticulously was not quite justified as has been

1. (1973) 2 SCR 66 : (1973) 3 SCC 753 : 1973 SCC (Cri) 521.
2. (1964) 1 SCR 639 : AIR 1963 SC 1430 : (1963) 2 Cri LJ 397.

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done by the trial Judge. According to the prosecution case the respondent was in love with one of his girl students, named, Nupur Ghosh and this led to the serious differences between the respondent and his wife, the unfortunate Tara Devi, inducing the former to clear the path of his misadventure in the manner alleged by the prosecution. On the other hand, the defence seems to suggest that the alleged love-affair of the respondent led Tara Devi to commit suicide. Whether the respondent will be able to prove his defence at the final stage of the trial may not be of much consequence. Surely the prosecution will have to prove its case beyond any reasonable doubt. Although at the time of the alleged occurrence were present in the house of the respondent his brother, his brother's wife, and children the prosecution does not seem to be in possession of any ocular testimony of an eye witness of the occurrence. The case will largely, rather, wholly, depend upon the circumstantial evidence. A stricter proof will have to be applied for judging the guilt of the accused with reference to the various circumstantial evidence against him. But at this stage the Additional Sessions Judge was not right when he said – "it appears that there is neither direct evidence nor any circumstantial evidence to connect the accused with the alleged murder of Tara Devi". He also ought not to have referred to the varying opinions of the Circle Inspector and the Superintendent of Police, Motihari as to the submission of charge-sheet against the respondent.

7. Apart from some other circumstances, as it appears, the prosecution proposes to prove in this case, and whether it will succeed in proving them or not is a different matter, the High Court has enumerated three circumstances in its impugned order. We may just add, and that is only for the purpose of a cursory observation for deciding the matter at this stage, that the story of assault on Tara Devi by the respondent a day prior to the occurrence is perhaps sought to be proved by the evidence of Chandreshwar Singh, the informant, and it seems, he would also try to say, rightly or wrongly, that at the time of the said assault the respondent had given her a threat to kill her. The High Court felt persuaded to take the view that the three circumstantial facts, even if proved, would not be incompatible with the innocence of the accused and then added "There may be strong suspicion against the opposite party, but the three circumstances which I have just mentioned above, cannot be said to be incompatible with the defence of the accused". The said observation of the High Court is not quite apposite in the background of the law which we have enunciated above with reference to the provisions of Sections 227 and 228 of the Code.

8. For the reasons stated above, we set aside the impugned orders of the High Court and the Sessions Court and direct that appropriate charge or charges will be framed against the respondent and the trial shall proceed further in accordance with the law.