**[REPORTABLE]**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No. 1399 of 2023**

**Captain Manjit Singh Virdi (Retd.) …Appellant(s)**

***Versus***

**Hussain Mohammed Shattaf & Ors. …Respondent(s)**

**J U D G M E N T**

## Rajesh Bindal, J.

1. The order dated 17.07.2013 passed by the High Court of Judicature at Bombay in Revision Application No. 135 of 2012 has been challenged by the appellant. By the aforesaid order, the High Court has set aside the order dated 21.02.2012 passed by the court below vide which application filed by the Respondent nos.1 and 2 for discharge, was dismissed.

2. The dispute arises out of an FIR No. 46 of 2006 registered at Lonawala City Police Station on 14.05.2006 for murder of Manmohan Singh Sukhdev Singh Virdi, a resident of Virdi's Bungalow, Thombarewadi, Lonawala. His body was found lying in a pool of blood in his bedroom.

3. Learned counsel appearing for the Appellant submitted that a bare perusal of the impugned order passed by the High Court shows that a mini trial has been conducted merely by referring to some of the statements recorded by the police during investigation, which were forming part of the chargesheet. This was beyond the scope of jurisdiction of the Court at the time of consideration of application for discharge. The Court had failed to consider the fact that there was Psychological Evaluation including Psychological Evaluation including Psychological Profiling, Polygraph Testing and Brain Electrical Oscillations Signature Profiling (BEOS) conducted on Respondent Nos. 1 and four other aides of respondent no.1, which lead towards the accusation of Respondent Nos. 1 and 2 in the crime.

4. In support of the arguments, learned counsel for the appellant has placed reliance upon the judgment of this Court in the case of ***State of Maharashtra and Anr. v. Dr. Maroti S/o.Kashinath Pimpalkar***[1].

5. On the other hand, learned counsel for Respondent Nos. 1 and 2 submitted that it is a case of blind murder, hence, there was no eye-witness. There was no enmity of Respondent

1 (2023) 4 SCC 298

Nos. 1 and 2 with the deceased. They were happily living in the neighbourhood. A false story was built up by the prosecution for which there is no material to support. He further submitted that Trial Court had failed to exercise jurisdiction vested in it to discharge the respondent no. 1 and 2. They have been falsely implicated in the case. It would be abuse of the process of the Court in case they are made to face trial. The relevant material collected by the prosecution was considered by the High Court.

6. Though the order passed by the High Court as such has not been challenged by the State. The learned counsel for the State having no explanation therefor sought to argue that the impugned order cannot be legally sustained as at the stage of consideration of application for discharge, appreciation of the evidence as such was not possible as the same could be only after the evidence is recorded in the Court after trial. At the stage of framing of charge only prima facie case is to be seen.

7. Heard learned counsel for the parties and perused the record and relevant papers.

8. After registration of FIR, investigation was conducted and statements of number of persons were recorded under

Section 161 and 164 of Cr.P.C. Even a Psychological Evaluation including Psychological Profiling, Polygraph Testing and Brain Electrical Oscillations Signature Profiling (BEOS) of Respondent No. 1 was conducted on 31.5.2007 and similar tests were conducted on the other four persons viz. Baliram Chidhu Khade, Mohan Vijayamma Shridharan, Ashok Gajraj Chaudhary, Mehboob Dastagi Sheikh who were close aides of respondent no.1.

9. As it was a blind murder, the crime was investigated and chargesheet dated 09.12.2009 was filed against Hussain Mohammed Shattaf and Waheeda Hussain Shattaf (Respondent nos. 1 and 2) and Zaanish Khan stating therein that while Respondent no.1 was staying in Dubai for the purpose of his business, his wife respondent no.2 came in contact with the deceased and developed friendship. They started meeting each other frequently. The friendship turned into physical relationship. When the Respondent No.1 returned from Dubai, he came to know about the same. To take revenge, he in connivance with respondent no.2 and one Zaanish Khan conspired to kill the deceased through unknown assailants.

10. As the case was triable by Sessions, the matter was committed by the Magistrate to the Sessions Court, Pune. Immediately thereafter Respondent Nos. 1 and 2 filed revision application for discharge. The same was dismissed by the Trial Court vide Order dated 21.02.2012. The High Court vide impugned order had set aside the order passed by the Trial Court and discharged Respondent Nos. 1 and 2. The aforesaid order is under challenge before this Court.

11. The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the Trial Court had not yet framed the charges. Immediately after filing of chargesheet, application for discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the

trial is allowed to proceed, the same would amount to abuse of process of the Court.

12. The law on the point has been summarised in a recent judgment of this Court in ***State of Rajasthan v. Ashok Kumar Kashyap***[2]. Relevant paras are extracted below: -

> **"**11.1**.** In *P. Vijayan* v. *State of Kerala*, (2010) 2 SCC 398, this Court had an occasion to consider Section 227 CrPC What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to

2 (2021) 11 SCC 191

determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11.2**.** In the recent decision of this Court in *State of Karnataka* v. *M.R. Hiremath*, (2019) 7 SCC 515, one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under:

> "*25*. The High Court [*M.R. Hiremath* v. *State*, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N.* v. *N. Suresh Rajan*, (2014) 11 SCC 709,

adverting to the earlier decisions on the subject, this Court held:

> '*29*. … At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

13. The relevant part of the impugned order passed by the High Court is reproduced below:-

> "In the statement of Suresh Thapa dated 11.12.2006, he says he had attended party at the bungalow. In the statement of Collector Singh Thakur recorded on 9.12.2007, he refers tearing of papers by accused no.2 at 7 O' clock on 13.5.2006. Even this statement

primarily would not activate to nail the accused-applicants as the incident of elimination/murder has taken place late in the night. Mr. Suresh Thapa, in his statement on 14.5.2006, refers that in the late night he was sitting of a platform at site, at such time a car came to drop deceased and thereafter the deceased went with his gardener Hari to his house. In further statement dated 28.6.2006, he refers of a silver colour Tata India Car coming to the area of society and a person from the car called the deceased loudly, he was tall with long hair. The deceased came and had chat with the said person who later accompanied the deceased to bungalow. In third statement dated 11.12.2006, Suresh Thapa changed his earlier version and stated that a silver colour car came to the gate of the society and driver honked, the deceased came out of his bungalow, he opened the door, the deceased closed the door and he then went towards bungalow no.5 and while returning, the car was standing near his bungalow, the driver went ahead to the deceased, however they had no communication. Then he went ahead and called “Captain Captain”, they had chat. The person accompanied the deceased and 2 – 3 person were sitting in the car. In the supplementary statement of Ramesh Dhakol – another security, dated 1.1.2007, he refers of vehicle of accused no.2 coming back at around 2 to 2.30 a.m. in the night and she went to

her bungalow. He says, his earlier statement was incorrect. Dr. Ajitsingh in his statement dated 31.12.2006 refers to his visit to the deceased and also with the deceased to the house of accused nos. 1 and 2 in April, 2006. He saw the deceased and accused no.2 on a swing while accused no. 1 was nearby. This he noticed on 13.5.2006. The statement of Sajida Begum – wife of Zarnish (Mohd. Asgar) does not implicate the accused-applicants. Brother of the deceased Mr. Manjitsingh refers to a communication he had with accused no.1 in past, wherein accused no.1 allegedly conveyed him the deceased wanted to purchase everything, if time permits he will also purchase his wife. This communication was on telephone".

14. A perusal of the impugned order passed by the High Court shows that some of the material collected by the Investigating Agency filed alongwith chargesheet has been referred to in a sketchy manner. The statements of Suresh Sherbahadur Thapa, Collector Thakur Singh, Ramesh Dhakol, Manjit Singh, Dr. Ajit Singh and Sajida Begum have been referred to. However, from a perusal of the record, it is evident that their statements have not be noticed either in their entirety or only part of the statements recorded on a particular

day has been noticed and the statements recorded either before or after, have not been referred to. Besides that, the Investigating Agency had recorded the statements of Hiraman Dyaneshwar Chaudhari, Ramesh Murlidhar, Mohan Vs., Ashok Gunaji Thosar, Mehboob Dastagi Sheikh, and Rakma Shivram Waghmare, which have not been referred to and considered by the High Court while discharging Respondent Nos. 1 and 2. The fact cannot lost sight of that it was a case of blind murder. The circumstances only could have nailed the accused through the material collected by the Investigating Agency.

15. Psychological Evaluation including Psychological Profiling, Polygraph Testing and BEOS of Respondent No. 1 was conducted. Besides this test was also conducted of other four persons who were close aides of respondent no.1, namely, Ahok Gajraj Chaudhary, Mehboob Dastagir Sheikh, Baliram Chidhu Khade and Mohan Vijayamma Shridharan.

16. In the report of the test conducted on Respondent No.1, the opinion furnished by the Directorate of Forensic Sciences Laboratory, Home Department, Maharashtra, shows the involvement of Respondent No.1 in the murder of Captain Manmohan Singh. His psychological profiling also pointed out

towards him being an antisocial personality with tendency to go against the social norms. Relevant part of the report is extracted below:-

> "Psychological Evaluation of the subject Mohammed Shattaf clearly indicates his involvement in the murder of Capt. Manmohan Singh as indicated by Deception on the questions of Polygraph and by Experiential Knowledge present on the significant probes on BEOS. This finding was corroborated by the finding that the subject has Antisocial Personality Traits and a tendency to portray himself in a socially desirable way. Narcoanalysis could not be conducted on the subject he refused to give written consent for the procedure".
>
> (**emphasis supplied**)

17. Besides this, opinion regarding four other persons shows that there was deceit in responding to question about knowledge of killing of deceased. Relevant part of the report is extracted below:-

> "Psychological Evaluation of the subjects Ashok Gajraj Chaudhary and Mehboob Dastagi Sheikh included Psychological Profiling and Polygraph Examination in the case of the murder of Capt. Manmohan Singh. With regard to Ashok Gajraj Chaudary, even though he denied having any

knowledge about the murder, yet his Polygraph examination revealed about the murder, yet his Polygraph examination revealed his attempts to deceive on questions related to him hiding information related to the death of Capt. Singh him being asked by somebody to hide information about this murder, and him knowing who has killed the victim. In relation to Mehboob Dastagi Sheikh, even though he denied having witnessed or helped in the murder of Capt. Manmohan Singh, or having any knowledge about the same, yet his Polygraph Examination reveals 'Deception' on the question related to him knowing who has murdered Capt. Manmohan Singh".

(**emphasis supplied**)

18. The High Court vide impugned order had summed up the entire evidence in two paras without even referring to the Psychological Evaluation including Psychological Profiling, Polygraph Testing and Brain Electrical Oscillations Signature Profiling (BEOS) tests of the accused and the other aides of respondent no.1 and ordered discharge of Respondent Nos.1 and 2.

19. Though Psychological Evaluation test report only may not be sufficient to convict an accused but certainly a material

piece of evidence. Despite this material on record, the High Court could not have opined that the case was not made out even for framing of charge, for which only prima facie case is to be seen.

20. If the facts of the case are examined in the light of law laid down by this Court on the subject, it is evident that the High Court has not even referred to the evidence collected by Investigating Agency produced alongwith chargesheet in its entirety. Rather there is selective reference to the statements of some of the persons recorded during investigation. It shows that there was total non-application of mind. The High Court had exercised the jurisdiction in a manner which is not vested in it to scuttle the trial of a heinous crime.

21. For the reasons mentioned above, the appeal is allowed and the impugned order of the High Court is set aside.

_____, J.
(Abhay S. Oka)

_____, J.
(Rajesh Bindal)

New Delhi
May 18, 2023.

//JK- PM //