Admissibility of documents of unimpeachable quality by the defense before filing of charge sheet to provide for grounds of discharge?

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Abstract and introduction

"Justice delayed is Justice denied", the oft quoted words of William Goldstone best portray the judicial system prevalent in our country. It is imperative to note that, the Bar and the Bench have both contributed to the delays in the disposal of cases. The factors for delay range from the ever-increasing number of appeals, judges' vacancies and also filing of false cases both by the state and the bar. More often than not, the lower courts are usually riled up with cases which go on appeal after appeal and it is pertinent that, it's usually against the same offenders. The recent report by the NCRB is indicative of the fact that about 2/3rd of inmates serving jail time are under trial1 - people not convicted of any crime and currently on trial in a court of law. The report also reveals that; these inmates are usually illiterate or having an educational qualification of less than Class X. The rigors of a trial are exhausting, time consuming, and causes huge financial distress on the accused. Both the police and the bar well versed with the delays and hardship involved in the trial proceedings tend to try to profit from the accused's miserable situation. It provides for easy monies to the lawyers and allows for the police to have someone to blame even if it is based on nothing conclusive. To put the accused through the rigors of a trial and serve jail time, when little or nothing substantial is indicative of the fact that he committed the offence is completely unjust and is against the very tenet of justice which the judiciary promises to deliver. As the rules of trial provides for the prosecution to be heard first before giving the accused an opportunity make their case, documents in support of the defense is admissible only during the proceedings after the commencement of the trial. Thus, the damage to the accused's life is already said and done before he's given a chance to prove his innocence. Although there are various provisions instilled in the Criminal Procedure Code, 1973 (CrPC)

[1]Prison statistics India 2015, National Crime Records Bureau, Ministry of Home Affairs, Government of India, http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf.

which deals with false implications and attempts to protect the interests of the accused in instance of false charges, nothing explicitly allows him to prove his innocence before it's too late i.e. the accused must prove his innocence during the proceedings and not before the commencement of the trial itself.

The paper attempts to look for an effective redressal mechanism for the accused, by using descriptive and analytical tools and at the same time look into various judicial testaments,and examining the admissibility of documents produced by the defence before the trial and the powers of the court to quash proceedings when presented with documents of unimpeachable quality suggesting contrary to the prosecution' case before the filing of charge sheet.

Analysis

Preliminary hearings in a criminal trial, is of vital importance and allows for the accused to seek right to discharge. This is an opportunity to the court to do away with meritless cases at the very first instance. However, it is important to note that the scope of scrutiny at the stage and the material that the court can look into to grant discharge are extremely limited. It has been established by various precedents from the Apex court that the courts cannot look beyond the material that the prosecution relies on, in order to contemplate discharge or proceed to trial.

But time and practice are indicative of the fact that, this often leads to the prosecution relying on self-serving and incriminating material and also suppressing evidence of exculpatory nature which could potentially disprove the case against the accused in the initial stages itself, which is purely against the principles of a fair trial.

The journey of the accused's right to discharge has been nothing short of dramatic, the provisions in the CrPC are broadly Sections 227, 239, and 245 depending on the nature of the offence that one is looking at. (Broadly, Section 227 provides for discharge in Sessions cases, whereas, Section 239 provides for discharge in cases triable by a Magistrate, and 245 in case of warrant trials) and the Apex Court also enunciated the circumstances when the accused can be discharged in the case of Ajay Kumar Ghose v State of Jharkhand & Anr.[2]

The Apex Court observed that –

13. The essential difference of procedure in the trial of warrant case on the basis of a police

[2]Ajay Kumar Ghose *v.* State of Jharkhand & Anr., A.I.R. 2009 S.C. 2282. (India)

report and that instituted otherwise than on the police report, is particularly marked in Sections 238 and 239 Cr.P.C. on one side and Sections 244 and 245 Cr.P.C., on the other. Under Section 238, when in a warrant case, instituted on a police report, the accused appears or is brought before the Magistrate, the Magistrate has to satisfy himself that he has been supplied the necessary documents like police report, FIR, statements recorded
under sub-Section (3) of Section 161 Cr.P.C. of all the witnesses proposed to be examined by the prosecution, as also the confessions and statements recorded under Section 164 and any other documents, which have been forwarded by the prosecuting agency to the Court. After that, comes the stage of discharge, for which it is provided in Section 239, Cr.P.C. that the Magistrate has to consider the police report and the documents sent with it under Section 173, Cr.P.C. and if necessary, has to examine the accused and has to hear the prosecution of the accused, and if on such examination and hearing, the Magistrate considers the charge to be groundless, he would discharge the accused and record his reasons for so doing. The prosecution at that stage is not required to lead evidence. If, on examination of aforementioned documents, he comes to the prima facie conclusion that there is a ground for proceeding with the trial, he proceeds to frame the charge. For framing the charge, he does not have to pass a separate order. It is then that the charge is framed under Section 240, Cr.P.C. and the trial proceeds for recording the evidence.

Thus, a brief reading of S.227, S.239, and S.245 is indicative as to how vital the police report and documents annexed along with it under S.173, CrPC are, as they remain as sole evidence based on which the court can conclude the charge as groundless. S.173 mandates the police report to contain all the documents and witness statements which the prosecution wishes to rely upon and examine. A plain reading of S.173 can point to the fact that, the section does not explicitly mandate the Investigating Officer to reveal material which might be in favor of the accused and as observed in the aforementioned case, the prosecution has fairly limited chances to lead the evidence and that too after the charge has been filed, hence the prosecution in practice resort to produce evidence in a very self-serving manner and giving room to suppress/withhold evidence to make their case stronger against the accused.

The court fundamentally is vested with the power to summon documents under S.91, CrPC for the purposes of investigation, inquiry, trial or other proceedings from any officer in charge. Thus, the question of whether the accused has the right to invoke S.91 and the admissibility of

documents brought forth by him in support of his case which are not part of the police report is still a room for doubt and debate.

Nothing in S.91 prohibits its exercise at the stage of discharge, but S.227 and S.239 narrows down the scope of looking into any material beyond the Police report.

The first judicial attempt to strike a harmony between these two provisions was taken by the Apex Court in the matter of State of Orissa v. Debendra Nath Padhi[3].

In Padhi, a Three-Judge Bench of the Supreme Court held that defence material cannot be advanced at the stage of framing of charge since the defence material of the accused is irrelevant at that stage. The main reason for the passing of this judgement was to avoid a 'trial' within a trial i.e. multiplicity of proceedings. By passing this judgement, the judges aimed to reduce delays in our overburdened criminal court. The decision further held that ordinarily, there would be no right of the Accused to seek production of a document under Section 91 of the CrPC at the stage of framing of charge. It was also held that the words "record of the case" in Section 227 were to be understood in light of Section 209(c) of the CrPC, which provides that in a case exclusively triable by a Sessions Judge, the Magistrate shall send to the Sessions Court "the record of the case and the documents and articles, if any, which are to be produced in evidence". Therefore, submissions had to be confined to “record of the case” i.e. material produced by the police. Reading the two provisions together, the Court found that "No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial."

The Apex Court thus, adopted a very confined view in reference to the rights available to the accused to prove the falsity of the prosecutions’ case in the trial court itself, at the stage of discharge and allowed to withhold evidence in the accused's favor in order to make their own case stronger. The latter is mainly due to the lack of explicit statutory mandate on the Investigation Officer to provide all forms of evidence including the ones in defenses favor under S.173 of the CrPC. It is rather ill-fated as preliminary hearings are much more effective and meaningful across seas, than in our country. For instance, in US, the defence gets to cross-examine Prosecution witnesses at the stage of discharge (called a "preliminary hearing") with a view to demonstrate that there is no probable cause to take the Accused to trial.

[3]State of Orissa *v.* Debendra Nath Padhi,(2005) 1 S.C.C. 568. (India)

Subsequently, somewhat differing notes have been struck on this issue by smaller Two-Judge Benches of the Supreme Court, in the case of Rukmini Narvekar v. Vijaya Satardekar. In this case, the accused had challenged the issue of process against him by seeking quashing of proceedings before the High Court under Section 482 of the CrPC. The High Court had allowed the accused's petition by relying on evidence recorded in a separate civil proceeding in which the complainant was the plaintiff. The question before the Supreme Court was whether defence material could be relied upon by the High Court while deciding on cognizance. Justice Markandey Katju observed that –

"...there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the Prosecution's version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted."

Thus, by the precedent set forth by Rukmini allowed for the court to take cognizance of the material put forth by the defendant and allowed the accused an opportunity to put forward documents in support of his testimony. But this was to be done so in rare and exceptional circumstances, wherein the documents submitted totally dismantles the prosecution's case and proves the innocence of the accused. Though very practical in nature, the precedent lacks firm judicial authority as it is not warranted by the decision of the Supreme Court in Padhi and there no reason specified as to why the High Court, acting under its Section 482 jurisdiction, can examine documents of unimpeachable quality, however, the Trial Court cannot. The High Court could its wide array of powers using S.482 CrPC in the interest of justice could look into documents of sterling quality to satisfy grounds of discharge whereas the Trail Court bound by the guidelines set forth in the CrPC and the decision in Padhi could not look into the same documents to provide for discharge.

The question of whether the right of the Accused to rely on material other than the police report,

to make out a case for discharge was sparked open again in the case of Nitya Dharmananda vs. Gopal Sheelum Reddy (hereinafter referred to as "Nitya")

The roots of the debate were initiated when a petition was filed by an accused in the High Court of Karnataka pleading it to direct the trial court to summon the witness statements with the police. The High Court in this case, allowed the accused petition and directed the Trial court in accordance to the same. In Nitya, the same question was posed before the court i.e. whether the Accused, before framing of charges, can file an application under Section 91 of the CrPC, with a view to summon statements of witnesses and some documents collected in the course of investigation, but not made a part of the Investigation Report; the said material being available with the police. The Supreme Court overruled High Court's judgment and held that the accused has no right under section 91 of the CrPC to summon material. But to uphold the principles of a fair trial, it was decided that the court may summon such material, if it is of sterling quality and has crucial bearing on framing of the charge.

The division bench of the Supreme Court observed that -

"...it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91 CrPC dehors the satisfaction of the court, at the stage of charge."

Bridging the principles laid down in Padhi and Nitya, it is observed that a similarity is indicated by the use of the word "ordinarily" in the relevant passage of Padhi, essentially indicating that an application under Section 91 cannot ordinarily be used by the Accused to summon defence material and goes on to explain as what would constitute the 'extraordinary' event under which section 91 of the CrPC can so be used. There are three conditions stated in the latter judgement. They are –

- Documents and evidence withheld by the police or the Prosecution.
- Said evidence being of 'sterling quality'.
- Said evidence having vital importance on the framing of the charge.

Conclusion

The Supreme Court thereby reconciled the two conflicting judgements i.e. Rukmini and Padhi, and thus laid down an effective mechanism wherein the interests of the accused are protected, allowing him an opportunity under S.91 to provide for documents of sterling quality for discharge, if and only when he manages to prove that such documents have been withheld by the prosecution. But, at the same time, the judgement does not remove the prosecution's right to be heard by conferring tremendous power on the magistrate at the stage of discharge. The judgement therefore recognizes the imperatives of fair trial demand and also recognizes that the Accused should be provided with material, which has been collected by the Investigating Officer during investigation, and allow him to place reliance on the same while arguing for a discharge.