

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

**CRIMINAL APPEAL NO. 1051 OF 2018  
(Arising out of SLP(CrI.) No.2313 OF 2017**

**SANDEEP SUNIL KUMAR LOHARIA** Appellant(s)

**VERSUS**

**SUMEET GANPATRAO BACHEWAR & ANR.** Respondent(s)

**CRIMINAL APPEAL NO. 1053 OF 2018  
(Arising out of SLP(CrI.) No.5726 OF 2018**

**AND**

**CRIMINAL APPEAL NO. 1052 OF 2018  
(Arising out of SLP(CrI.) No.46 OF 2018**

**O R D E R**

1. Leave granted.
2. The trial Court had refused to discharge the accused who were facing a charge under Section 302 of the Indian Penal Code. The High Court while exercising its revisional power overturned the verdict and thought it proper to order for discharge. Aggrieved, these appeals (arising out of special leave petition (CrI.) Nos.2313/2017 and 46/2018) have been filed by the

son of the deceased.

3. We have heard Shri Siddharth Luthra, learned senior Counsel appearing for the appellant-complainant (Sh. Sandeep Sunil Kumar Loharia), Shri Salman Khurshid, learned senior counsel appearing for the respondent-accused (Sumeet Ganpatrao Bachewar) and Ms. Indira Jaising, learned senior counsel appearing for respondent-accused (Bhupesh Prakashchand Gupta). We have also heard Mr. Nishant R. Katneshwarkar who has appeared for the appellant-State in criminal appeal arising out of Special Leave Petition (Crl.) No.5726/2018.

4. In the course of the investigation, particularly, on the basis of the statements recorded under Section 161 of the Code of Criminal Procedure, 1908 two sets of evidence have been received by the prosecution. The first is the statement made by the deceased to the person (Tejas Sharad Janjurne) who drove the auto-rickshaw and took the deceased to the hospital and an employee of the deceased, one

Satyendra Kumar Hanumanprasad Pandey who also accompanied the deceased to the hospital. In the statement made before the aforesaid two persons by the deceased the names of accused-Suresh Bijlani and Anurag Shivmohan Garg have been mentioned. According to the son i.e. appellant he had arrived at the hospital at about 8:40 a.m. and the deceased (his father) had stated before him that he was attacked and injured, apart from Suresh Bijlani and Anurag Garg, by three other persons namely Shri Sumeet Bacchewar, Shri S.P. Agarwal and Shri Bhupesh Prakashchand Gupta (respondents-accused).

5. The High Court in the impugned order has observed that the statement made by the appellant appears to be calculated and does not indicate trustworthiness in comparison to the statements made by the person who took him in the auto rickshaw and by the employee i.e. Satyendra.

6. Appreciation of evidence is an exercise

that the High Court, in our considered view, could not have undertaken at this stage of consideration of the application for discharge. But this is what precisely what High Court appears to have been done.

7. Ms. Indira Jaising in support of her contentions relied on the following passage from a Judgment of this Court in Yogesh alias Sachin Jagdish Joshi Vs. State of Maharashtra<sup>1</sup>

*16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is*

<sup>1</sup> (2008) 10 SCC 394

*whether the materials on record, if unrebutted, makes a conviction reasonably possible."*

8. While there can be no dispute on the proposition that has been laid by this Court in paragraph 16 of Yogesh alias Sachin Jagdish Joshi (supra) what has happened in the present case is that the statements recorded in the course of investigation had been weighed, analyzed and appreciated. In a situation where the said evidence is yet to be tested by cross-examination and the veracity of either of the two versions is yet to be established, it cannot be said that there are two possible views of the matter. The observations of this Court in Yogesh alias Sachin Jagdish Joshi (supra) will, therefore, not assist the accused.

9. In view of the above, we hold that the power exercised by the High Court to order for discharge was premature. Consequently, we are of the view that the order of the High Court ought to be set aside which we hereby do. The appeals are, consequently, allowed.

10. We make it clear that our interference with the order of the High Court is in no way any expression of opinion on the merits of the rival contentions which will naturally have to be considered at the trial.

....., J.  
(RANJAN GOGOI)

....., J.  
(NAVIN SINHA)

....., J.  
(K.M. JOSEPH)

NEW DELHI  
AUGUST 23, 2018

ITEM NO.3

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No.2313/2017

(Arising out of impugned final judgment and order dated 01-02-2017 in CRLRA No.383/2016 passed by the High Court of Judicature at Bombay)

SANDEEP SUNIL KUMAR LOHARIA

Petitioner(s)

VERSUS

SUMEET GANPATRAO BACHEWAR & ANR.

Respondent(s)

WITH

SLP(Cr1) No.5726/2018 (II-A)

(FOR

FOR EXEMPTION FROM FILING O.T. ON IA 43866/2017

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 43868/2017)

SLP(Cr1) No.46/2018 (II-A)

Date : 23-08-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

HON'BLE MR. JUSTICE K.M. JOSEPH

For Parties (s)

Mr. Sidharth Luthra, Sr. Adv.

Mr. Vinay Navare, Adv.

Mr. Ameya Lambhate, Adv.

Ms. Gwen Kartika, Adv.

Mr. Ravindra S. Chingale, Adv.

Ms. Abha R. Sharma, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR

Ms. Deepa M. Kulkarni, Adv.

Mr. Salman Khurshid, Sr. Adv.

Mr. D.N. Ray, Adv.

Mr. Ajit More, Adv.

Mr. Lokesh K. Choudhary, Adv.

Mr. Dillip Kumar Nayak, Adv.

Ms. Shabeena Anjum, Adv.

Ms. Amna Darakshan, Adv.

Mr. Vinodh Kanna B., AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR  
Ms. Deepa M. Kulkarni, Adv.

Ms. Indira Jaising, Sr. Adv.  
Mr. Pradeep Rai, Sr. Adv.  
Mr. Vinay Vats, Adv.  
Ms. Sangeeta Madan, Adv.  
Mr. Vinod Gupta, Adv.  
Mr. Nishanth Patil, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are allowed in terms of the signed Order.

Pending application(s), if any, shall stand disposed of.

(POOJA ARORA)  
COURT MASTER

(ASHA SONI)  
BRANCH OFFICER

(Signed order is placed on the file)