

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. REV. P. NO.407/2009**

Date of Decision : 30.7.2009

RAJ KUMAR SHARMA

.....Petitioner

Through: Mr.Anupam S.Sharma,
Advocate.

Versus

STATE OF DELHI

..... Respondent

Through: Mr.Pawan Bahl, APP for
the State.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J. *(Oral)*

1. The petitioner by virtue of the present petition has challenged the order dated 25th April, 2009 by which a charge under Section 302/365/201/34 IPC was ordered to be framed against Raj Kumar Sharma.
2. I have heard the learned counsel for the petitioner as well as learned APP for the State. The contentions of the learned counsel for the petitioner are as under.
 - i) The first submission of the learned counsel for the petitioner is that Yashwant Kaushik, star witness of the prosecution is purported to have made a contradictory statement with regard to the killing of the deceased Tapas and Anuj. The learned counsel took

me through the statement of Yashwant Kaushik recorded under Section 164 Cr.P.C. as well as through his statement recorded under Section 161 of Cr.P.C. It is alleged that Yashwnt Kaushik in his statement under Section 164 Cr.P.C. has specifically stated that the deceased was strangled while the FSL report clearly shows that the various parts of the body of the deceased like intestine, pieces of liver, spleen and kidney were found to contain Zinc Phosphide and Ethyl Alcohol. Some amount of Sodium Chloride were also found. It was urged that this clearly belies the statement of Yashwant Kaushik recorded under Section 161 Cr.P.C. with regard to the cause of death which is stated to be by pressing throat of the deceased.

- ii) The second contention of the learned counsel for the petitioner is that although the incident is alleged to have been taken place on 4th February, 2008 but the FIR was registered only after a delay of five days on 9th February, 2008 despite the fact that the mother of Tapas Smt. Bhullu Dutta had expressed her doubt of involvement of one Panditji and his family members in the death of Tapas Dutta. Therefore, it was urged that this factor, if taken into consideration, cumulatively and clearly entitled the petitioner to discharge. The learned counsel for the petitioner also referred to a

case titled as ***Hem Chand Vs. State of Jharkhand***, 2008 (2) SCC (Cri) 537 wherein in para 13 it has been held that :-

“13. The learned counsel for CBI is, thus, correct in his submission that what has been refused to be looked into by the learned Special Judge related to the documents filed by the appellant along with his application for discharge. The court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.”

3. Another judgment which has been relied upon by the learned counsel for the petitioner is ***Dilwar Bal Vs. State of Maharashtra*** 2002 (I) JCC 172 wherein para 12 it has been observed as under:-

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the

evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

4. The learned APP has disputed the contentions of the learned counsel for the petitioner and urged that at the stage of framing of charge a meticulous examination of the evidence is not to be carried out nor the Court is expected to see probative value of the material on record. The Court must see whether a prima facie case is made out against the accused or not. The prima facie case has been interpreted as urged by the learned APP is that there must be a ‘grave suspicion’ against the petitioner about his involvement in the commission of offence. The learned APP has also relied upon the judgment of 2008 (2) SC 561 in support of his submission.

5. I have considered the respective submissions as well as gone through the three judgments cited by the learned counsel for the parties. There is no dispute about the fact that the Apex Court consistently in all the authorities including the two cited by the learned counsel for the petitioner, has laid down that while ordering framing of charge, the limited enquiry, which the Court has to conduct is whether a grave suspicion existed against the accused for the purpose of framing the charge or not.

The Court at the stage of framing of charge is not expected to do meticulous dissection or evaluation of the evidence produced by the prosecution. In other words, the Court does not have to see the probative value of the different material, which have been filed along with the charge sheet at the time of framing of the charge.

6. Keeping this broad principle of law in mind, if we examine the case, no doubt there is variation in the complaint as well as in the statement under Section 164 of Cr.P.C., but the fact of the matter remains that the statement recorded under Section 161 of Cr.P.C. is very categorical as to the manner in which the ghastly crime of killing of Tapas and Anuj has been done. No doubt, the deceased was allegedly strangled to death but the forensic lab report shows the presence of some Zinc Phosphate or Sodium Chloride or ethyl alcohol in some parts of the body, which is contradictory to the oral statement, but it cannot earn the discharge to the petitioner at this stage. This is possible that accused may not have given the complete picture of the causing of death of the deceased. Therefore, this so-called contradiction in the method of killing of the deceased at this stage if made a ground for discharge of the petitioner then it will attach a probative value to one version over the other, which cannot be permitted at the stage of framing of charge. Therefore, these two points which have been taken by the learned counsel for the petitioner namely the variance in the stand taken by the witness in two different statements or the variance in the stand taken in

contrast to the FSL report are not of such a nature which can result in discharge of the petitioner at the moment.

7. So far as the question of submission made by the learned counsel for the petitioner that the nature of evidence which must be adduced by the prosecution at the time of framing of charge must be of such a nature which will result in conviction is not with respect a correct enunciation of law. It seems that one sentence in this regard observed by the apex Court in 2008 (2) SCC Cri. 517 in para 13 has been torn out of context. If para 13 is read in its entirety and especially in the background of the subsequent para 14 then the Apex Court was very clear that at the time of framing of the charge, the quantum of evidence which is required for the purpose of framing the charge is such as to create only a grave suspicion and not of such a nature which will result in conviction of the accused.

8. It may be pertinent to state here that in para 14 of the same judgment the Apex Court has referred to another judgment of the Supreme Court that is **State of MP Vs. Mohan Lal** (2006) 6 SCC 338 wherein it has been observed as under:-

“7. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

It was furthermore observed :

“11. As is evident from the paragraph extracted above if the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even

if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence then the charge can be quashed.”

We agree with the said view.”

9. Therefore, this point also does not have any merit.

iii) The third submission of the learned counsel for the petitioner is that there was a delay of five days in lodging the FIR cannot be a ground, which will result in discharge. No doubt the incident is purported to have been taken place on 4th February, 2008 but FIR was registered on 9th February, 2009 is not a ground which can result in discharge of the petitioner. It may be a ground which may be relevant at the time of consideration and appreciation of evidence as to why the complainant or for that matter any other person chose to remain silent for five days before putting criminal justice machinery into motion. However, this cannot be a sole ground for discharging the accused.

10. For the reasons mentioned above, I am of the considered opinion that the petition is totally misconceived. The order directing framing of charge dated 25.4.2009 is not suffering from any impropriety, illegality or incorrectness and accordingly, the present petition is dismissed.

V.K. SHALI, J.

July 30, 2009

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