



2024:DHC:8696

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

% Judgment delivered on:11.11.2024

+ **CRL.M.C. 298/2019 CRL.M.A. 1274/2019 & CRL.M.A. 7722/2022**

SH. JAI BHAGWAN

.....Petitioner

versus

STATE

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ashutosh Jha & Mr. Oleander D. Singh, Advs.

For the Respondent : Mr. Naresh Chahar, APP for the State.
SI Nitin Singh, ARSC / Crime Branch.

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. This present petition is filed challenging the order dated 06.07.2018 passed by the learned Additional Sessions Judge (ASJ) – 02, Tis Hazari Courts, Delhi pursuant to which the order dated 30.09.2013 passed by the learned Metropolitan Magistrate (MM), to the extent of discharging the petitioner has been set aside.

BRIEF FACTS



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2. The seminal facts relevant for the purpose of adjudicating the present petition are as follows :

2.1 FIR No. 2/2013, dated 01.01.2013 was registered at Police Station Civil Lines for offences under Sections 181/420 of the Indian Penal Code, 1860 (IPC) against the accused, Dinesh Yadav. The complaint alleged that Dinesh Yadav used a forged residential address and other fabricated documents to register multiple buses and obtained a driving license. The charge sheet, filed on 01.03.2013, named only Dinesh Yadav and one Rakam Singh as accused.

2.2 The petitioner's name appeared later in a supplementary charge sheet filed on 25.07.2013, after further investigation by the Crime Branch. The supplementary charge sheet alleged that Jai Bhagwan, while serving as Motor Vehicle Inspector at the Transport Authority had negligently approved Dinesh Yadav's application for a permanent driving license without conducting necessary verification. This alleged lapse in duty, according to the prosecution, facilitated Dinesh Yadav's fraudulent activities.

2.3 The learned MM assessed the evidence against the petitioner and, by order dated 30.09.2013, discharged the petitioner, concluding that there was insufficient evidence to proceed with charges against him. The operative part reads as under:

“Therefore, there is no material on record against the accused Jai Bhagwan to show that he shared a common intention with the accused Dinesh Yadav for the commission



of the alleged offences or have had any agreement with the other accused persons or of doing any act by an unlawful means to attract the basic ingredients of the section 120 A or section 34 of IPC against him. Hence, there is no sufficient material on record to frame the charge against the accused Jai Bhagwan under section 34 IPC or section 120 B IPC.

The further case of the prosecution is that the accused Dinesh Yadav has managed to get the photocopy of the ration card of Anant Gopal with the connivance of the accused Rakam Singh who forged the name of the accused Dinesh Yadav on the said photocopy of the ration card and produced the same along with the affidavit of the accused Dinesh Yadav before the Transport Authority for issuance of the driving license and thus they have also committed the offences u/s 468/471 IPC. The first and foremost ingredient of Section 468 IPC or Section 471 IPC is that there must be a document which is alleged to be forged. There is no such document on record which is alleged to be forged by the accused. The investigating officer of the case has submitted in the chargesheet that as per the report received by him from the State Transport Authority department the aforementioned document submitted by the accused Dinesh Yadav for issuance of the driving license have been weeded out. Therefore, in the absence of the alleged forged document on record, there is no material on record against the accused persons for framing of the charge for the offences u/s 468 and 471 IPC.

Learned APP for the state has relied on a case titled as *Nakul Kohli v. State* 2010 Cri. L. J. 4536 wherein it was held that in a given case where a photocopy is used as the primary offending article the same would be the primary evidence for the purpose of trial of the said case. There can be no disagreement with the proposition of law laid down in the said case. However, the facts and circumstances of the present case are different from the said case as in the present case the alleged forged photocopy of the ration card itself is not on the record as the same has been stated to be weeded out by the state transport department as per rules. Therefore, the aforesaid authority is also of no help to the prosecution.



So far as the case against the accused Rakam Singh is concerned the only evidence against him is the disclosure statements made by him and the accused Dinesh Yadav. There is no other material on record against him. In view of Section 25 and 26 of the Indian Evidence Act, the disclosure statements made by the accused in the custody of the police are inadmissible in evidence. Therefore, there is no material on record against the accused Rakam Singh for framing of charge against him for the alleged offences.

Therefore, in view of my above discussions, there are no sufficient materials on the record to frame charge against the accused Rakam Singh and the accused Jai Bhagwan for alleged offences against them.....”

2.4 However, upon a revision petition moved by the State, the learned ASJ, by the impugned judgment, set aside the order dated 30.09.2013, directing the learned trial court to frame charges against the petitioner in accordance with law and held as under:

“9. According to the prosecution accused Jai Bhagwan was posted at Transport Authority, Mall Road Delhi and was working as a Motor vehicles inspector and was deputed for approval and issuance of driving license and for supervision over concerned dealing assistant and he had approved and issued a driving license to the accused Dinesh Yadav on the basis of forged and fabricated documents without proper scrutiny and verification of documents.

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17. For the going reasons, I am of the view the impugned order cannot be sustained. The revision petition stands allowed. The impugned order dated 30.09.2013 set aside, the Ld Trial court to proceed against the accused Jai Bhagwan as per law and will also frame additional charge against the accused Dinesh Yadav u/s.471/120-B IPC. Both respondents to appear before the Ld. Trial Court on the date fixed before it. A copy of order be sent to Ld Trial



Court, Trial record be sent back. Revision File be consigned to the Record Room.”

2.5 Aggrieved by the aforesaid order, the petitioner has preferred the present petition.

3. The learned counsel for the petitioner submitted that that the impugned judgment is erroneous and that the discharge order by the learned MM was just and proper, given the absence of any *prima facie* evidence implicating him.

4. He submitted that the FIR and the charge sheet filed by the prosecution named only Dinesh Yadav and another individual, Rakam Singh, as accused and petitioner's name was introduced solely in the supplementary charge sheet, which does not carry the same weight as the initial charge sheet regarding initial evidence against him. This fact undermines the prosecution's argument for charges, as he was not initially considered complicit or involved.

5. He submitted that the petitioner, being an inspector at the Transport Authority, had only limited responsibility for issuing driving licenses. He was tasked with administrative duties, specifically to approve applications based on documents already processed and verified by other officials at the learner's license stage. Therefore, his role was only procedural, lacking any obligation to verify underlying documents for accuracy.

6. He submitted that, according to the office order dated 30.01.2004, there was no requirement to verify proof of residence or date of birth at the time of issuing a permanent driving license. The documents related to the applicant's residence were checked at the



time of obtaining the learner's license, with scrutiny handled by the dealing clerk or approving authority at that stage. Since the petitioner was not posted at the time the learner's license was issued, he cannot be held responsible for any oversight in that process.

7. He submitted that Section 471 of the IPC requires knowledge or intent to use a forged document as genuine. No evidence demonstrates that Jai Bhagwan had any knowledge of forged documents or intended to participate in any conspiracy. He submitted that to invoke Section 120B of the IPC, a clear agreement between co-conspirators must be demonstrated. In the present case, the prosecution failed to show any meeting of minds or agreement between the petitioner and Dinesh Yadav or any other accused. He submitted that there was nothing on record to show that accused – Dinesh Yadav ever met the petitioner. The only alleged link between them was one – Rakam Singh, who was discharged by the order dated 30.09.2013 passed by the learned MM and that order has attained finality *qua* Rakam Singh.

8. The learned Additional Public Prosecutor for the State argued that the impugned judgment is just and that the supplementary charge sheet provided grounds to frame charges against the petitioner.

9. He submitted that the petitioner, as an inspector at the Transport Authority, failed to prevent the issuance of a driving license to Dinesh Yadav despite irregularities. The approval given by the petitioner was, according to the prosecution, a result of negligence, and this failure to perform due diligence enabled accused - Dinesh Yadav to use forged documents.



10. This Court has heard the arguments addressed by the counsels for the parties, and has perused the material on record.

11. Since the petitioner has assailed the impugned judgment directing framing of charges against him, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the CrPC. The relevant sections are set out below:

“Section 227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Section 228. Framing of Charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which--

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”



12. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge on discharging the accused is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. [Ref: **Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460**]

13. The Hon'ble Apex Court, in the case of **Sajjan Kumar v. CBI : (2010) 9 SCC 368**, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The court 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, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.



(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

(emphasis supplied)

14. In in the case of **Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. : 2022 SCC OnLine SC 1057**, the Hon’ble Apex Court has explained the law on charge and held as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability



of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

*22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. **At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt.** The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.*

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any



proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

15. The role of the petitioner, in the present case, was limited to administrative approval, with no direct responsibility for verifying the documents submitted for the learner’s license stage, as these were already processed by other officials.

16. The official office orders dated 30.01.2004 and 12.05.2005 which were placed on record by the petitioner explicitly restricted the petitioner’s role to administrative tasks without requiring verification of document authenticity. Given this context, the learned MM correctly observed that no material on record implicates the petitioner with direct responsibility for verifying the documents used by accused - Dinesh Yadav.

17. The learned MM, in the order dated 30.09.2013 rightly noted that there was no evidence on record to suggest that the petitioner, Jai Bhagwan, and the co-accused, Dinesh Yadav, had any prior association or familiarity with each other. The learned MM highlighted that there was no material or testimony indicating that the petitioner had any knowledge of the alleged forged documents or any involvement in their creation or submission. The petitioner was implicated solely in a supplementary chargesheet, lacking any direct or circumstantial evidence of his intent or participation in the forgery.

18. There are two primary components that need to be fulfilled in order to establish the offence of ‘forgery’, namely : (i) that the accused



has fabricated an instrument ; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury. (Ref : ***Sushi Suri v. Central Bureau of Investigation : (2011) 5 SCC 708***)

19. The offences of ‘forgery’ and ‘cheating’ intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. In the present case, *prima facie* no dishonest intent can be attributed to the petitioner so as to raise any grave suspicion regarding his sharing the alleged common object with the accused persons for obtaining the driving license by unlawful means. Considering, the primary ingredient of dishonest intention itself could not be established against the petitioner, the offence of forgery too, has no legs to stand.

20. It is also significant to note that Rakam Singh, who was initially implicated as an accused in this case, has already been discharged. In light of this and the nature of the allegations, it is difficult to justify subjecting the petitioner to the ordeal of trial. At most, the petitioner may be accused of dereliction of duty, for which appropriate disciplinary action could have been pursued by the relevant authority. There is no allegation that he issued the driving license in collusion with the co-accused, or had any knowledge of the documents being forged.



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21. While the learned ASJ has the power to overturn a discharge order, it must be based on substantive grounds. In the present case, the learned MM's order discharging the petitioner was rooted in a careful assessment of evidence, or lack thereof, against the petitioner. The impugned judgment passed by the learned ASJ does not introduce any new material or compelling rationale that would warrant revisiting the order dated 30.09.2013 discharging the petitioner.

22. In light of these findings, the present petition is allowed. The impugned judgment dated, is set aside to the extent of proceeding with the charges against the petitioner, and the order dated 30.09.2013 passed by the learned MM is reinstated *qua* the petitioner.

AMIT MAHAJAN, J

NOVEMBER 11, 2024