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

\+ CRL.REV.P. 67/2016

DEEPAK ..... Petitioner

Through: Mr.Om Prakash Shrma, Mr.Vikas Sharma and Mr.Vikas Khatak, Advocates

versus

THE STATE (GOVT OF NCT OF DELHI) ..... Respondent

Through: Ms.Kusum Dhalla, APP for the State

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% 17.03.2016

1. This revision petition has been preferred by the petitioner impugning the order dated 26.11.2015 whereby he has been ordered to be charged for committing the offence punishable under Section 364A/34 IPC. The charge against the petitioner has been framed on 26.11.2015.

2. Brief written submissions have been filed by the petitioner.

3. I have heard Mr. O.P. Sharma, learned counsel on behalf of the petitioner and the learned APP for the State.

4. Learned counsel on behalf of the petitioner has submitted that as per the prosecution case, the child was kidnapped by accused Pawan and Jagdeep on 18.01.2015 in Alto car. They kept the kidnapped child in a room at H. No. RZ-17, Vinoba Bhave Enclave, CRPF Centre, Jharoda Kalan, New Delhi. The child has been recovered on 22.01.2015 at the instance of accused Pawan and at that time the child was with accused Jagdeep. The petitioner came into picture only on 21.01.2015 when accused Pawan had gone to collect the ransom amount from the father of the kidnapped boy. He

submits that all the ransom calls have been made by the accused Pawan. No recovery has been affected from the petitioner. He further submits that the petitioner has been shown to be involved only at the stage of collection of the ransom amount. As petitioner has no role in the kidnapping or keeping him confined till ransom was paid, no offence under Section 364A IPC is made out against him and he may be discharged.

5. Legal Position is well settled that at the stage of framing the charge probative value of material on record cannot be gone into. The Apex Court in the case ***State of Maharashtra vs. Som Nath Thapa (1996) 4 SCC 659*** has considered the issue as to when a charge can be framed. The relevant paragraphs are extracted hereunder:-

> *"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use.*
>
> *When can charge be framed?*
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> *25. This legal question is not as knotty as the first one. This is for the reason that there are clinching decisions of this Court on this aspect of the matter.*
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> *26. Shri Ram Jethmalani has urged that despite some variation in the language of three pairs of sections, which deal with the question of framing of charge or discharge, being relatable to either a sessions*

trial or trial of warrant case or summons case, ultimately converge to a single conclusion, namely that a prima facie case must be made out before charge can be framed. This is what was stated by a two-Judge Bench in R.S. Naik v. A. Antulay, MANU/SC/0198/1986: 1986CriLJ1922 .

27. Let us note the three pairs of sections Shri Jethmalani has in mind. These are Sections 227 and 228 in so far as sessions trial is concerned; Sections 239 and 240 relatable to trial of warrant cases; and Sections 245(1) and (2) qua trial of summons case. They read as below:

Section 227: Discharge - If, upon consideration of the record of the case and the documents submitted therein, 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, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for trial of warrant-cases instituted on a police report;

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

(2) Where the Judge frames any charge under Clause (b) of Sub-section (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.

(Emphasis supplied)

Section 239 : When accused shall be discharged - If, upon considering the police report and the document sent with it under Section 173 and making such examination, if any, of the accused as

the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Section 240 : Framing of charge - (1) if, upon such consideration, examination, if any, and hearing the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 245 : When accused shall be discharged - (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

28. Before adverting to what was stated in Antulay's case, AIR (1986) SC 2045, let the view expressed in State of Karnataka v. L. Muniswamy, (1977) 3 SCR 113, be noted. Therein, Chandrachud, J. (as he then was) speaking for a three Judge Bench stated at page 119 (of SCR) : (at pp. 1493-94 of AIR), that at the stage of framing charge the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasised.

29. What was stated in this regard in Stree Atyachar Virodhi

Parishad's case, (1989) 1 SCC 715, which was quoted with approval in paragraph 78 of State of West Bengal v. Mohd. Khalid, AIR (1995) SCW 559 is that what the Court has to see, while considering the question of framing the charge, is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into."

6. Before dealing with the contentions raised by learned counsel for the petitioner in the light of above legal position, it is necessary to mention here that though in the Index at Serial No.10, certified copy of the order dated 26.11.2015 has been mentioned as Annexure-'C' at page No.48 but at page No.48 only the copy of the formal charge framed against the petitioner and his co-accused has been placed and not the order on charge. Thus, the reasons given by learned ASJ for forming an opinion that that prima facie a case for framing of charge under Section 364A/34 IPC is made out against the petitioner and his co-accused, are not before this Court.

7. From perusal of the record, it can be seen that the child was allegedly kidnapped by two co-accused namely Pawan and Jagdeep and while Pawan was allegedly making ransom calls, Jagdeep was with the child at the place where the child was confined. The petitioner was allegedly present with the co-accused Pawan at the time of collection of the ransom amount from the father of the kidnapped child. This material prima facie was sufficient to charge the petitioner for the offence punishable under Section 364A/34 IPC.

8. The impugned does not suffer from any illegality or infirmity warranting any interference by this Court in exercise of its revisional jurisdiction.

9. The writ petition is dismissed.

MARCH 17, 2016/*'hkaur'* **PRATIBHA RANI, J.**