

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

Date of Decision : August 09th, 2016

+ CRL.M.C. 1291/2016

ANSHU MENDIRATTA

..... Petitioner

Through Mr.Nitin Sehgal, Adv.

versus

THE STATE

..... Respondent

Through Ms.Manjeet Arya, APP.
ASI Mahander Parkash, PS Mianwali
Nagar.

WITH

+ CRL.M.C. 1292/2016

NEERU ARORA

..... Petitioner

Through Mr.Nitin Sehgal, Adv.

versus

THE STATE

..... Respondent

Through Ms.Manjeet Arya, APP.
ASI Mahander Parkash, PS Mianwali
Nagar.

WITH

+ CRL.M.C. 1304/2016

ASHISH MENDIRATTA

..... Petitioner

Through Mr.Nitin Sehgal, Adv.

versus

THE STATE

..... Respondent

Through Ms.Manjeet Arya, APP.
ASI Mahander Parkash, PS Mianwali
Nagar.

WITH

+ CRL.M.C. 1305/2016

GURBAX SINGH

..... Petitioner

Through Mr.Nitin Sehgal, Adv.

versus

THE STATE

..... Respondent

Through Mr.G.M. Farooqui, APP.
ASI Mahander Parkash, PS Mianwali
Nagar.

AND

+ CRL.M.C. 1306/2016

SANDEEP KUMAR

..... Petitioner

Through Mr.Nitin Sehgal, Adv.

versus

THE STATE

..... Respondent

Through Mr.G.M. Farooqui, APP.
ASI Mahander Parkash, PS Mianwali
Nagar.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJL, J.

1. As all these petitions have been filed in the same FIR No.198/2013, under Section 288/336 IPC, Police Station Mianwali Nagar, against the order on charge dated 11.01.2016 and against the common order dated 25.02.2016 passed by the revisional court, therefore, all these petitions are decided together.

2. The present petitions have been filed by the petitioners, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as Cr.P.C.) for setting aside the order on charge dated 11.01.2016 passed by the learned Metropolitan Magistrate whereby charges under Section 288/336 IPC and alternate charge under Section 427 IPC had been ordered to be framed against the accused persons and also the order dated 25.02.2016 passed by the learned Additional Sessions Judge whereby the revision petitions filed by the petitioners were dismissed.

3. The facts in brief are that the FIR of the instant case was registered on the basis of complaint made by Sh.Deepak Gupta, General Manager, Symphony Celebrators Pvt. Ltd, D-11, Udyog Nagar, Main Rohtak Road, Delhi. It was alleged that excavation work was going on in the neighbouring plot no.D-12 of basement near the boundary wall of plot no.D-11. During excavation, left side wall of plot no.D-11 crumbled down. Despite repeated requests to the owners of plot no.D-12, they kept on excavating. Due to crumbling of wall, there was huge commotion in the

building and stampede followed. Sh. Gopal Sharma, chief security officer of the complainant's company had an ankle broken in order to save himself. The owner of the plot no.D-12 was Lucky Arora. The complainant's company suffered heavy losses because of the incident in terms of building, machine, plant, business and reputation.

4. During investigation, scene of crime was got photographed. Documents of the ownership of property no.D-12 were obtained and it was found that the property was jointly owned by accused Ashish Mendiratta, Anshu Mendiratta, Sandeep Kumar and Neeru Arora who had authorized accused Gurbax Singh, another owner of the said property to carry out the excavation work. Accused Gurbax Singh was arrested and was kept in column no.11 of the charge sheet, whereas other accused persons were kept in column no.12.

5. The learned MM vide order dated 11.01.2016 ordered for framing of charge under Section 288/336 IPC against all the accused persons and in alternate for offence punishable under Section 427 IPC. Thereafter, accused persons/petitioners preferred separate revision petitions which were dismissed by the learned ASJ vide order dated 25.02.2016. Feeling aggrieved by the orders passed by the Courts below, present revision petitions have been filed by the petitioners.

6. Arguments advanced by the learned counsel for the petitioners as well as learned Additional Public Prosecutors for the State were heard.

7. Argument advanced on behalf of the petitioners is that the petitioners were not present at the spot and there is no proximate link between the collapsing of wall and any such act of the petitioners. Collapsing of wall was such an accident and there was no act of participation of the petitioners in the same. It was further argued that in the present case *mens rea* is missing. The prosecution has not specified how the petitioners were negligent negligence so as to be made part of the criminal offence. There is no allegation against the petitioners of any deliberate or negligent act. The prosecution had not found any material against the petitioners except petitioner Gurbax Singh and that is why they were kept in column no.12, but the Trial Court framed the charges against them also without having material against them. It was further argued that the petitioners were the owners of the said plot and for that reason only they cannot be booked in the present case in the absence of *mens rea*.

8. In support of the above contentions, learned counsel relied upon the judgments in the case of *Ambalal D. Bhatt v. State of Gujarat AIR 1972 SC 1150*, *Kurban Hussein Mohamedali Rangwalla v. State of Maharashtra AIR 1965 SC 1616*, *Gulijeet Singh Kochar and Anr. v. State 121 (2005) DLT 516*, *Abdul Kalam v. State 2006 Cri.L.J. 3071*, *Ataur Rehman v. State (Crl. Rev.P. 930/2003 decided by this Court on 23.11.2009)*, *Ajay Malik v. State 1996 JCC 312* and *Dilawar Balu Kurane v. State of Maharashtra AIR 2002 SC 564*. The ratio of the judgments relied upon by the petitioners is that though the act done was a

negligent act, but it would not be enough to make the accused responsible for the same as there is requirement of proof that the rash and negligent act of the accused was the proximate cause of the incident.

9. Per contra, it was argued that it was well within the knowledge of the petitioners that the act of excavating the ground beneath the wall of the complainant's company would be able to cause damage to the said wall and it might be a danger to human life, but despite the same the excavation work did not stop and the wall of the complainant's company fell. There is enough material against the accused persons in the form of statements of witnesses and they cannot take the lame ground that they were just the owners of the plot in question. It was further argued that the role of accused persons can be ascertained only by way of evidence which is yet to be led before the Trial Court.

10. It is matter of record that the wall of the plot of the complainant fell on 26.07.2013 and as per the material placed on record, the petitioners were the owners of the property in question on the said date. It is even specifically alleged against the petitioners that the sanctioned building plan by the Municipal Corporation of Delhi was sanctioned in the name of all the petitioners. It is also matter of record that the petitioner Gurbax Singh was authorized by other owners of the property to carry out construction on the plot in question in which the accident in question had taken place. The photographs placed on record also showed that the entire wall of the plot of the complainant had

fallen in the plot of the petitioners.

11. It is not even disputed by the petitioners that they were not the owners of the property where the excavation work was undergoing on the date of incident. It is also an admitted fact that the sanctioned building plan was sanctioned in the name of all the accused persons which shows that the digging was done on the instructions of the petitioners. Vide an agreement entered into between the petitioners, they authorized petitioner Gurbax Singh to carry out the work of construction.

12. The law regarding framing of charge is well settled that if on the basis of 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 had committed the offence. At the time of framing of charges, the probative value of the material on record cannot be gone in to, and the material brought on record by the prosecution has to be accepted as true at that stage.

13. In *Subhadra v. State 1996 IV AD Delhi 181* it was observed that at the time of framing the charge, the court is not to apply the same standard of test and judgment which it finally applies before recording a finding of guilt or otherwise. At this stage, what the court has to see is whether there is ground enough for presuming that the accused have committed the offence for which they have been charged. The court is not to judge the veracity and effect of evidence whether it will culminate in conviction.

In *Smaty Machra and another v. State (Govt. of NCT of Delhi) 2007 Cr.L.J. 4341* it was held that the considerations which are relevant at time of framing of charges and those at time of conclusion of trial are entirely different. While grave suspicion would entitle Court to frame charges, grave suspicion alone would not entitle Court to convict a person in respect of said charges. If the Court has strong reasons to suspect that crime was committed by accused, then it would not be in error if it frames charges accordingly.

The Hon'ble Apex Court in the case titled, *State of Bihar v. Ramesh Singh AIR 1977 SC 2018* observed that at the stage of charge, standard of proof is quite different from the standard of proof at the stage of final judgment. It is the duty of the Court to see that on the allegation and evidence on record, whether there is suspicion that accused might have committed the offence, then Court has to frame the charges and proceed with the trial. Whereas standard of the proof at the time of judgment is that whether guilt of the accused has been proved beyond reasonable doubt and hypothesis of guilt is contrary to his innocence.

In the case of *Sajjan Kumar vs. Central Bureau of Investigation (2010) 9 SCC 368* it was observed that at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

14. In view of the above discussion and the law laid down on

the point of framing charge, this Court is of the considered opinion that there is sufficient material against the petitioners for framing charge against them. This Court does not find any ground to interfere in the orders passed by the Courts below as there is no illegality or infirmity in the same.

15. All the revision petitions are accordingly dismissed.

AUGUST 09, 2016
dd



(P.S.TEJI)
JUDGE