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

DECIDED ON : 3rd FEBRUARY, 2016

+ **CRL.M.C. 5550/2014 & CRL.M.A.No.18941/2014**

VISHAL THAKKAR

..... Petitioner

Through : Mr.Rohit Khurana, Advocate.

versus

STATE (NCT of DELHI) & ANR.

..... Respondents

Through : Ms.Meenakshi Dahiya, APP with
SI Jasbir Singh.
Mr.Malaya K.Chand, Advocate for
R2 along with R2 in person.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. The instant petition under Section 482 Cr.P.C. has been filed by the petitioner to quash / set-aside the order dated 07.08.2014 of learned Addl. Sessions Judge in Crl.R.No.46/2014 whereby order dated 26.04.2014 of learned Metropolitan Magistrate framing charge under Sections 354/506/323 IPC against the petitioner was upheld. Petition is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. The Trial Court, by the impugned order dated 26.04.2014, framed charge against the petitioner under Sections 354/509/323 IPC while discharging him for the offence under Section 506 IPC. The occurrence took place on 09.10.2009 when the complainant had gone at the petitioner's residence to serve 'dasti' summons returnable on 22.10.2009 in a civil case 383/2009 pending between the complainant's sister and petitioner's brother. In the complaint, the victim categorically implicated the petitioner and assigned specific and definite role to him in outraging her modesty and causing hurt. She suffered injury on her hand and was medically examined. The incident was reported to the police promptly and DD No.28A dated 09.10.2009 at 08.05 p.m. came into existence. PCR arrived at the spot.

3. Leaned counsel for the petitioner urged that the complainant had no authority or direction to serve the summons to the petitioner who was not a party to the civil suit at his residence and the complaint has been lodged to harass and pressurize them to settle the dispute. Status reports filed by the police exonerating him were not considered by the Trial Court. These submissions have no bearing on the complaint at this stage.

Allegations in the complaint cannot be brushed aside. Whether the

complainant was legally entitled to serve ‘dasti’ summons at petitioner’s residence needs investigation during trial. The Courts below in their concurrent findings have concluded that there was sufficient material at this stage to presume the commission of the aforesaid offences. It is to be noted that the Trial Court after considering the material and the status reports on record had already taken cognizance against the petitioner and the said order was not challenged. The revisional Court rightly observed that the learned Metropolitan Magistrate was competent to take her own view to agree or disagree with the police reports. The law with regard to framing of charge is well settled. In case of ‘*Union of India vs. Prafulla Kumar Samal*’, 1979 (3) SCC 4, the Apex Court laid broad contours on the point of framing of charge. The same are reproduced as under :

“Thus, on a consideration of the authorities mentioned above, the following principles emerge:

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.*
- (2) 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.*

- (3) *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult 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 while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*
- (4) *That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

4. In ‘*State of Orissa vs. Debendra Nath Padhi*’, 2005 (1) SCC

568, the Apex Court held :

“6. At the stage of framing charge, the trial court is required to consider whether there are sufficient ground to proceed against the accused. Section 227 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228. ”

5. In ‘*State of Bihar vs. Ramesh Singh*’ considering the scope of Sections 227 and 228 of the Code, it was held that at the stage of framing

of charge it is not obligatory for the judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused.

6. It was observed in the case of ‘*Rakesh Kumar Gupta vs. State*’, 2010 (1) CC Cases (HC) 513 :

“Thus at the time of framing of charge, the Court is not supposed to look into the evidence of the case in detail and is only to consider whether there is a strong suspicion against the accused on the basis of the material that comes before it. The court has the power to sift the evidence for the limited purpose of finding out, whether or not a prima facie case is made out against the accused. However, the Court is not supposed to delve deeply into the merits of the matter and start a roving expedition into the evidence that is brought forth it, as if conducting a trial. Further there is no one fixed definition that may be ascribed to the term “prima facie” nor can the term “strong suspicion” have singular meaning. While coming to the conclusion of a strong prima facie case or strong suspicion, the Court shall have to decide each case on the basis of its own independent facts and circumstances.”

7. Considering the facts and circumstances of the case, I find no merit in the present petition and it is dismissed. Pending application also stands disposed of.

8. Observations in the order shall have no impact on merits of the case.

(S.P.GARG)
JUDGE

FEBRUARY 03, 2016 / *tr*