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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 08th October, 2018

+ CRL.M.C. 3200/2015

RAMESH SHARMA

..... Petitioner

Through: Mr. B.S. Joon, Mr. Karan Chaudhary, Mr. Neeraj Balhara and Ms. Akriti Mishra, Advocates

versus

JAGAT SINGH NAGAR & ORS

..... Respondents

Through: Mr. Ramesh Gupta, Sr. Advocate with Mr. Arjun Dewan, Mr. Uday Bedi and Mr. Amit Sharma, Advocates for R-1 to 7 Ms. Meenakshi Dahiya, APP for the State with Insp. Vijay Kumar

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) no.120/10 was registered by police station Kalkaji on the basis of statement of the petitioner recorded on 17.03.2010 after he had been examined medically at All India Institute of Medical Sciences (AIIMS) Trauma Centre. Upon completion of investigation, report under Section 173 of the Code of Criminal Procedure, 1973 was submitted in February 2012 seeking trial of the first to seventh respondents for offences punishable under Sections 365, 506, 379, 356, 348, 34 of Indian Penal Code, 1860

(IPC). The said respondents stood summoned. The case eventually came up for consideration of charge. By order dated 22.03.2014, the Metropolitan Magistrate found the charge made out for offences under Sections 365, 323, 379, 356, 342, 506 IPC read with Section 34 IPC. The said order dated 22.03.2014 was challenged in the court of Sessions by criminal revision petitions (nos.05/14 and 18/14), the first submitted by the petitioner (first informant) and the second by the first to seventh respondents (accused persons). The revision petition of the accused persons was allowed and they were discharged and in consequence of such result, while the revision petition of the first informant (the petitioner) was dismissed.

2. Aggrieved by the said result before the revisional court, the present petition was filed invoking the inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC).
3. Submissions of all sides have been heard and the record has been perused.
4. The law on the question of consideration of the criminal case for charge is well settled. The principles governing the said subject were summarized by the Supreme Court in *Sajjan Kumar Vs. CBI, (2010) 9 SCC 368* 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.

5. The evidence presented through the charge-sheet on which basis the charge was to be considered shows that the first respondent is distantly related to Dr. Hans Nagar with whom the petitioner was employed as a nursing orderly in Orthonova Hospital during the relevant period. The second respondent is the son of the first respondent, third and fourth respondents also being closely related, the other private party respondents having been described as their associates.

6. It appears that two young daughters of the first respondent had gone missing and an FIR alleging their kidnapping had been registered with the police. The first respondent and those associated with him suspected the involvement of Dr. Hans Nagar. It was submitted at the hearing by all sides there being no dispute as to such facts, that against this backdrop a *habeas corpus* petition came to be filed in this court.

Eventually, the two girls were traced, allegedly having been accommodated by Dr. Hans Nagar. On the basis of statement given by the said girls, the FIR in question was concededly quashed.

7. The FIR of the case at hand pertains to the period when the girls were still not traceable. It is alleged by the petitioner that on 16.03.2010 he had accompanied his employer Dr. Hans Nagar to the office of Mr. I.D. Nagpal, advocate in Kalkaji area. Both had gone in auto rickshaw to the said place. Eventually, they reached near the house of Dr. Nagpal in property no.L-32, Kalkaji. The employer Dr. Hans Nagar had gone inside the house while the petitioner was stately waiting for him outside. It is alleged by him that sometime between 9.30 to 10.00 p.m., the private party respondents surrounded him and forcibly took him in a vehicle described as Skoda, first to Vasant Kunj area in the house of the first respondent where he was beaten up, his mobile phone having been snatched forcibly by the fifth respondent and questioned as to the whereabouts of the two missing girls. It is alleged that he was then blind folded and taken to some deserted jungle area ahead of Faridabad in Haryana where he was confined in a dark room, disrobed, beaten up with fists and legs and hockey sticks and threatened with a firearm (pistol). It is alleged that he was made to write certain papers and thereafter brought back at Badarpur Border of Delhi and Haryana where he was released at about 5.30 to 6.00 a.m. on 17.03.2010.

8. The charge-sheet was submitted by the police finding sufficient evidence for the private party respondents to be put on trial. The

Metropolitan Magistrate found grounds to proceed on such material and issued process. She also found sufficient grounds to frame charges and thus issued requisite directions to that end by the order dated 22.03.2014.

9. A perusal of the revisional court's order shows that it rejected the case of the prosecution as not credible, referring in this context to the fact that no certificate under Section 65 B of Indian Evidence Act, 1872 had been submitted with the call detail records (CDRs) of the various accused persons, which had been presented as material with the charge-sheet. The revisional court was also of the opinion that the MLC of the complainant does not go well with the allegations of merciless beatings. It held that the story of the petitioner was improbable and thus directed discharge of the respondents.

10. In the considered view of this court, the approach of the revisional court was wholly improper and uncalled for.

11. It was conceded by the learned counsel for the respondents that the certificate under Section 65 B of the Indian Evidence Act can be presented by the prosecution in support of the CDRs at the time they are to be introduced in evidence during the trial. [see *Kundan Singh vs The State*, 2015 SCCOnline Del. 13647].

12. The CDRs which are part of the trial court record have been perused. They reflect movement of the private party respondents Nitin Nagar, Jagat Singh Nagar, Tarun Nagar, Vijender Singh and Praveen Kumar in the general area of Kalkaji towards Vasant Kunj and

Faridabad, from around the time of alleged abduction through the night of 16th and 17th March 2010. This *prima facie* lends corroboration to the version of the petitioner in the FIR which cannot be ignored.

13. It does appear that Mr. I.D.Nagpal, advocate may have died. It also does appear that the auto rickshaw driver may not have been very clear or categorical about the sequence of events. It may also be noted that in the DD entry no.29A logged at 10.37 p.m. on 16.03.2010 by police station Kalkaji, reference was made to use of the car make Santro. But then, it has to be remembered that when the petitioner was abducted, neither his employer Dr. Hans Nagar nor Mr. I.D.Nagpal were outside so as to be witnesses to the entire sequence of events. Initial inputs to the police may not have been wholly accurate. No benefit on account of such discrepancies can be considered to be granted not the least at the stage of framing of charge. The counsel for the second to seventh respondents was at pains to analyze the call detail records of the petitioner and those who are accused of the complicity to submit that the allegations are unfounded and credible. Such roving inquiry is not permissible at the stage of consideration of charge.

14. In the considered view of this court, the Metropolitan Magistrate had taken a correct view on the subject of charge which should not have been displaced by the revisional court.

15. For the above reasons, the petition is allowed. The impugned order of the revisional court is set aside. The order of the learned

Metropolitan Magistrate is revived and, consequently, the proceedings before the trial court stand restored and shall be taken further by framing charges in terms of the order dated 22.03.2014 of the Metropolitan Magistrate.

16. The respondents are directed to appear before the concerned criminal court on 19.11.2018.

17. The petition is disposed of accordingly.

R.K.GAUBA, J.

October 08, 2018

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