

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

+ **CRL.REV.P. 315/2018**

Date of decision: 22nd FEBRUARY, 2021

IN THE MATTER OF:

SHYAM SINGH YADAV Petitioner
Through Mr. Mohit Chaudhary, Advocate

versus

THE STATE GOVT OF NCT OF DELHI & ORS Respondents
Through Ms. Meenakshi Chauhan, APP for
State
Mr. Gurinder Singh, Advocate for
R-2
Mr. Harsh Jaidka, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
SUBRAMONIUM PRASAD, J.

1. This revision petition filed under Section 397/401 Cr.P.C is directed against the order dated 12.12.2017, passed by the Additional Sessions Judge-02 (South East District) Saket Courts, New Delhi, in Criminal Appeal No. 487/2017 where by the Additional Sessions Judge has held that the offence under Section 307 IPC is not made out against the respondent Nos.2 and 3 and has sent the case back to the Chief Metropolitan Magistrate (South-east) Saket Courts without framing a charge.

2. The short question which arises for consideration in this revision petition is the consequence of a Sessions Judge taking the view, that the offence is not exclusively triable by him under Section 228(1)(a) Cr.P.C. In such a situation, is the Sessions Judge required to frame charges before

transferring the case to the Chief Judicial Magistrate ?

3. Shorn of unnecessary details the facts leading to this revision petition are as under:

a) On 02.11.2011, a complaint was submitted to the ACP, Ambedkar Nagar, New Delhi stating that at about 12 noon the complainant/petitioner herein went to Dr. Karni Singh shooting range, Tughlakabad to participate in a shooting event. It is stated that when he was going to Lane Number 11 assigned to him by the range officer, the accused Avtar Singh Sethi, Senior Vice President and Baljit Singh Sethi, ex-Secretary prevented him from entering the lane. It is alleged that when he tried to go there they caught hold of his throat which suffocated him and he fell down. It is stated that crowd gathered there and the complainant was rescued. It is stated that the accused Avtar Singh Sethi and the accused Baljit Singh Sethi, sent him out of the range and threatened him that if the complainant comes there again then they will get cases registered against him. The charge sheet further states that on the receipt of the complaint the complainant was medically examined at the AIIMS Trauma centre and the doctor opined that the nature of injury is simple. The charge-sheet states that the complainant approached the court by filing an application under Section 156(3) Cr.P.C for registration of FIR and as per the direction of the court an ATR was filed 01.05.2012. It is stated in the charge-sheet that the Metropolitan Magistrate-04 (South), Saket Court, New Delhi directed the police station Ambedkar Nagar to lodge an FIR under appropriate sections. Consequently an FIR was

registered. After hearing the arguments on point of charge the learned Metropolitan Magistrate-08 (South East), Saket Courts, New Delhi came to the conclusion that in view of the material available on record and specific allegations made in the complaint *prima facie* offence under Section 307 IPC is made out which is exclusively triable by learned Sessions Court. Accordingly, the learned Metropolitan Magistrate committed the case to the Court of Sessions. The file complete in all respects was sent to the court of Ld. District and Sessions Judge (In-charge South East District).

b) After the case was committed to the Sessions Court on 12.12.2017, the learned Sessions Judge after hearing the parties on the question of framing of charge came to the conclusion that the order dated 10.10.2017 passed by the learned Metropolitan Magistrate is not sustainable in law for the reason that the said order was passed without giving any opportunity to the accused. It was found by the learned Additional Sessions Judge-02 that the order dated 10.10.2017 has been passed against the process of natural justice.

c) Instead of exercising its powers *suo moto* under Section 397 Cr.P.C. the learned Additional Sessions Judge-02 (South East), Saket Courts, New Delhi, to set aside the order dated 10.10.2017, the learned Additional Sessions Judge examined the issue as to whether the offence under Section 307 IPC is made out on the facts of the present case and came to the conclusion that a case under Section 307 IPC is not made out.

d) Accordingly, the learned Additional Sessions Judge sent the

file back to the learned Chief Metropolitan Magistrate, South-east, Saket Courts and directed the accused to appear before the learned Chief Metropolitan Magistrate, Saket, who was to assign the case to the concerned Metropolitan Magistrate or any other Magistrate of competent jurisdiction for further proceedings.

e) It is this order which has been challenged in this revision petition.

4. Heard Mr. Mohit Chaudhary, learned counsel appearing for the petitioner, Ms. Meenakshi Chauhan, learned APP appearing for the State, Mr. Gurinder Singh, learned counsel appearing for the respondent No.2 and Mr. Harsh Jaidka, learned counsel appearing for the respondent No.3 and perused the documents.

5. Mr. Mohit Chaudhary, learned counsel for the petitioner states that the impugned order is contrary to the mandate of Section 228 Cr.P.C. He would contend that it was mandatory on the part of the Additional Sessions Judge to first frame a charge and then only could he have sent the matter back to the Chief Judicial Magistrate. He would state that it was not open to the learned Additional Sessions Judge to simply send back the matter without framing the charge to the Chief Metropolitan Magistrate.

6. *Per contra*, Mr. Gurinder Singh, learned counsel appearing for the accused would contend that in a case not exclusively triable by Court of Sessions, it is not mandatory on the Court of Sessions to first frame a charge against the accused and only then transfer the matter back to the Chief Judicial Magistrate. It is his discretion either to frame a charge or not. He would state that Section 228(1)(a) Cr.P.C specifically states that if the Court

of Sessions is of the opinion that the accused has committed an offence which is not exclusively triable by the Sessions Court he 'may' frame a charge against the accused and by order transfer the case for trial to the Chief Judicial Magistrate. He contends that the language of the Section 228 Cr.P.C is not ambiguous and it is not mandatory on the part of the Court of Sessions to frame charge. Learned counsel for the respondent further states that failure to frame charge by a Court of Sessions in a case which is not exclusively triable by a Court of Sessions is neither an irregularity which vitiates proceedings under Section 461 Cr.P.C rather it is not even an irregularity which does not vitiate proceedings under Section 460 Cr.P.C.

7. Section 228 Cr.P.C reads as under:

“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 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 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)

8. Section 228 Cr.P.C finds its place in Chapter XVIII of the Cr.P.C which deals with trial before the Court of Sessions. Section 228(1)(a) Cr.P.C deals with the cases which are not exclusively triable by the Court of Sessions. Section 228(1)(b) Cr.P.C deals with the cases which are exclusively triable by the Court of Sessions. Section 228(1)(a) Cr.P.C specifically states that if the Judge is of the opinion that there is a ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of Sessions he 'may' frame a charge against the accused and transfer the case to the Chief Judicial Magistrate for further proceedings. However under Section 228(1)(b) if an offence is exclusively triable by the Court of Session then the Sessions Court shall frame charge in writing.

9. There are two judgments by the High Court of Punjab and Haryana taking diametrically opposite view. In Jagdish Sharma v. State of Haryana, 1988(2) R.C.R.(Criminal) 337, the Punjab and Haryana High Court has taken a view that Sessions Judge cannot send the case back to the Chief Judicial Magistrate without framing the charge. Paragraph two of the said judgment reads as under:

“2. The learned Sessions Judge was to frame the charge and also send the case to the Chief Judicial Magistrate for trial. The order sending the case back to the Chief Judicial Magistrate without framing the charge is not legally maintainable. The order of Additional Sessions Judge, Narnaul, dated March 16,1988 is set aside and he is directed to frame the

charge made out against the petitioner in the light of the provisions of section 228 Criminal Procedure Code, 1973 With this direction the petition is disposed of.” (emphasis supplied)

However, another single bench of the Punjab and Haryana High Court in Devinder Singh v. State of Punjab, **2018 SCC OnLine P&H 4161**, state that the provisions of Section 228 Cr.P.C. is not mandatory and it is the discretion of the Court of Sessions that it can frame the charge and then send it to the Magistrate or it can send the case to the Magistrate under Section 228 Cr.P.C. without framing the charge and in that eventuality the Magistrate will frame charges. Paragraph eight of the said judgment reads as under:

”8. The provisions of Section 228 Cr.P.C. itself show that the Court of Session may frame charge and these provisions are not mandatory. It is the discretion of the Court of Session that it can frame the charge and then send it to the Magistrate or it can send the case to the Magistrate under Section 228 Cr.P.C. without framing the charge and in that eventuality the Magistrate will frame charge.” (emphasis supplied)

10. It is well settled that in the absence of any context indicating a contrary intention the same meaning should be attached to the word used in the statute and departure from literal rule of interpretation should be done only in very rare case and ordinarily there should be judicial restraint. A departure from giving a different meaning of the words in the statute is adopted only to avoid hardship, inconvenience, injustice, absurdity or if it leads to any anomaly.

11. As noted earlier, in a trial before Court of Sessions if the Court of Sessions is of the opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the Sessions Court then it is mandatory to frame, in writing, the charges against the accused. For this purpose, Section 228(1)(b) Cr.P.C has used the word “*shall*” which makes it mandatory on the part of the Judge to frame the charge. However, under Section 228(1)(a) Cr.P.C if after hearing the accused and considering all the material on record and after hearing the submissions of the accused and the prosecution, the Judge is of the opinion that there is a ground for presumption that the accused has committed an offence which is not exclusively triable by the Court of Sessions, he may frame charges and transfer the case. The legislature has consciously used the word “*may*” as opposed to the word “*shall*” in Section 228(1)(b) Cr.P.C. A reading of the Section 228 Cr.P.C in its entirety would show that the legislature has used the words “*may*” and “*shall*” in the same Section at different places. Had the legislature intended that while exercising powers under Section 228(1)(a) Cr.P.C, the Court of Sessions is required to frame charges, while transferring the case, the same would have been made mandatory much like, Section 228(1)(b).

12. It is settled law that different words must be given different meanings in the same statute, unless there is an occasion to give different words the same meaning. In the case of Kailash Nath Agarwal v. Pradeshia Industrial & Investment Corpn. of U.P. Ltd., (2003) 4 SCC 305, the Supreme Court observed as under:

"20. There is an apparent distinction between the

expressions “proceeding” and “suit” used in Section 22(1). While it is true that two different words may be used in the same statute to convey the same meaning, that is the exception rather than the rule. The general rule is that when two different words are used by the same statute, prima facie one has to construe these different words as carrying different meanings. In Kanhaiyalal Vishindas Gidwani [(1993) 2 SCC 144] this Court found that the words “subscribed” and “signed” had been used in the Representation of the People Act, 1951 interchangeably and, therefore, in that context the Court came to the conclusion that when the legislature used the word “subscribed” it did not intend anything more than “signing”. The words “suit” and “proceeding” have not been used interchangeably in SICA. Therefore, the reasons which persuaded this Court to give the same meaning to two different words in a statute cannot be applied here.”

13. There is no reason to give any other meaning to the word “may” and there is no necessity to read the word “may” as “shall” in Section 228(1)(a) Cr.P.C. It is open to the Sessions Court either to frame charge or not, while transferring the case to the Chief Judicial Magistrate of first class who may either try the offence himself or send it to any other Magistrate of competent jurisdiction who will then proceed further in accordance with the procedure prescribed in the Cr.P.C.

14. The Supreme Court in Sudhir v. State of M.P., (2001) 2 SCC 688, has observed as under:

“16. The employment of the word “may” at one place and the word “shall” at another place in the same sub-section unmistakably indicates that when the offence is not triable exclusively by the Sessions

Court it is not mandatory that he should order transfer of the case to the Chief Judicial Magistrate after framing a charge.....” (emphasis supplied)

15. A reading of the Section 228 Cr.P.C shows that it is not mandatory for the Sessions Court to first frame a charge under Section 228(1)(a) of the Cr.P.C unlike under Section 228(1)(b) of the Cr.P.C.

16. In the present case the learned Additional Sessions Judge had decided not to frame the charge himself as it was not mandatory for him to do so. There is no error in the judgment impugned in the revision petition.

17. Accordingly, the Judgment dated 12.12.2017 passed by the learned Additional Sessions Judge-02 (South East District) Saket Courts, New Delhi, in Criminal Appeal No. 487/2017 is sustained.

18. Accordingly, the revision petition is dismissed.

SUBRAMONIUM PRASAD, J.

FEBRUARY 22, 2021

Rahul