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

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Reserved on: 09.01.2023

Pronounced on: 17.01.2023

+ **CRL.M.C. 84/2023**

VINAY GUPTA & ORS.

..... Petitioner

Through: Mr. Visheshwar Srivastav and
Mr. Manoj Gautam,
Advocates

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for State with ASI
Roshnraj Singh, P.S. Sangam
Vihar.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The petitioner has filed the present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") seeking setting aside of the impugned order dated 20.09.2022 passed by learned Principal and Sessions Judge (South), New Delhi in C.R. NO. 270/2022 wherein, the order dated 01.06.2022, passed by learned Metropolitan Magistrate 04 (South) Saket Court, New Delhi in C.R. Case No.

3036/2018, relating to FIR No. 140/2017 registered at Police Station Sangam Vihar, has been upheld.

2. The brief facts of the case are that on 26.03.2017, petitioner no.1, i.e., Vinay Gupta, along with petitioner no.2, i.e., Satish Gupta and petitioner no.3, i.e., Aman Gupta, had gone to meet some acquaintances at around 7:30 pm, in C Block at Sehrawat Gas Agency, New Delhi where a person namely, Pawan Bhure along with six–seven persons including respondent no.2, i.e., Narender and respondent no. 3, i.e., Sumit Kumar surrounded the present petitioners and threatened them stating that they shall not allow any political campaign in the area. The petitioners herein asked respondent nos. 2 & 3 to leave them alone, however, respondent nos. 2 & 3 caught hold of one, namely Ashutosh Gupta and attacked him and the petitioners. Petitioners called the PCR to the crime spot, but respondents absconded from the spot before the PCR could arrive. After that, PCR took injured petitioner nos. 1, 3 and Ashutosh to Batra Hospital. After treating the injured persons, doctors prepared their MLC. On 27.03.2017, the petitioners herein lodged an FIR bearing no. 139/2017 at Police Station Sangam Vihar, Delhi, for offences punishable under Sections 323/341/506 and 34 of the Indian Penal Code, 1860 (“IPC”).

3. On 27.03.2017, respondent no. 2 also lodged a cross FIR bearing no. 140/2017 at Police Station Sangam Vihar, for offences punishable under Sections 324 and 34 of the Indian Penal Code, 1860 (“IPC”), wherein it was stated by respondent no. 2 that on 26.03.2017, the petitioners herein, along with a few others came near

C Block, Sherawat Gas Agency for election campaign and during a heated conversation with the respondents, petitioners herein started beating respondent nos. 2 and 3 with a stick and a sharp thing/weapon thereby causing serious injuries. After that, respondent nos. 2 and 3 went to AIIMS Trauma Centre, New Delhi, where the concerned doctors had to administer seven stitches to respondent nos. 2 and 10 stitches to respondent no. 3. MLCs of both respondent nos. 2 & 3 were filed alongwith the complaint.

4. The police, after investigating the FIR bearing no. 140/2017, lodged by respondent nos.2 and 3, submitted the charge sheet under Sections 324 and 34 IPC, whereupon cognizance was taken against the petitioners, and the case was committed to the **Court of Sessions for trial.**

5. In due course of the proceedings, the counsel for the petitioners moved an application before the learned Trial Court in Case No. 3036/2017 under section 294 Cr.P.C calling upon the prosecution to admit the record of the cross-case FIR no. 139/2017. Learned Trial Court vide order dated 11.03.2022, being satisfied with the documents filed on behalf of the petitioners, took on record the documents as being admitted by the prosecution. The relevant portion of said order is as under:

“Today matter is fixed for arguments on charge, however an application w/s 294 CrPC has been moved on behalf of the accused persons calling upon the prosecution to admit the record of the cross -case FIR no. 139/17.

Certified copy of the said record has been filed along with the application. Same has been perused by Id. APP for the

State and he has stated that he has no objection to admit the same.

Being satisfied, the documents filed on behalf of the accused persons is taken on record as being admitted by prosecution.

Adjournment sought for arguments on charge.

File be put up alongwith cross case FIR no. 139/17 for arguments on charge”.

6. The learned Trial Court *vide* order dated 01.06.2022 framed the charges against the accused persons, including the petitioners, and the relevant portion of the order reads as under:

“Counsel has relied upon the record of the cross-case bearing FIR no. 139/2017 to establish that no case is made out against the present accused persons.

*It is to observe that law is well settled that evidence of the cross-case cannot be relied upon in the other case and even same cannot be looked into. Again, the arguments of the cross-case also cannot be considered by the court. In this regard, reliance is placed upon the judgment of **Nathi Lal & Ors. Vs. State of UP. & Anr. 1990 (Supp.) SCC 145.***

Accordingly, the contention of the Ld. Defence counsel are not sustainable. It is further observed that in the FIR specific allegations have been raised against all three present accused. Post wading through the charge sheet and the accompanying documents, I am of the view that prima face there are sufficient grounds for proceedings. against the accused persons with the trial.

Accordingly, application moved on behalf of accused person is hereby dismissed.

Charge u/s 324/34 IPC has been framed and explained to the accused persons to which they pleaded not guilty and claimed trial. Complainant is bound down for the next date. Be put up alongwith cross-case FIR no. 139/2017 for PE on 20.09.2022”.

7. In the aforementioned circumstances, the petitioners being aggrieved by the decision of the learned Trial Court to frame charges against them under Sections 324 and 34 IPC, challenged the same before the learned Principal and Sessions Judge (South), New Delhi. Learned Principal and Sessions Judge vide order dated 20.09.2022 dismissed the petition and upheld the order dated 01.06.2022 passed by learned Trial Court, the relevant portion of which reads as under:

“7. In revisional jurisdiction, court is to examine the correctness, legality or propriety of the order. In the facts & circumstances of the present case, there is no irregularity, illegality, impropriety or perversity in the view taken by the Ld. Trial Court. This court, in its limited jurisdiction, would not be justified in re-appreciating the material, when no vital aspects of the case have been ignored by the trial court. There is no relevant material, which has not been considered or any irrelevant material, which has been taken into account by the Ld. Trial court. Therefore, this court is satisfied, as regard the correctness, legality & propriety of the order passed.

8. Thus, order framing charge dated 01.06.2022, passed by MM-04, South District, Saket, New Delhi is upheld. Finding no irregularity, illegality, impropriety or perversity, in the revision petition, the same is dismissed. It is made clear that nothing said herein, shall have bearing on merits of the case”.

8. Aggrieved by the aforesaid order dated 20.09.2022, the present petition has been filled by the petitioners.

9. Learned counsel for the petitioners states that the learned Appellate Court and learned Trial Court have committed an error in framing charges since both the courts ignored the fact that petitioners

had moved an application under Section 294 Cr.P.C. which was duly admitted by the learned Trial Court vide order dated 11.03.2022 and the same was to be referred to while passing order dated 01.06.2017 and the impugned order dated 20.09.2022.

10. Learned counsel for the petitioners also states that the learned Trial Court erred in relying upon decision in *Nathi Lal & Ors. Vs. State of U.P & Anr.* 1990 (Supp.) SCC 145 since the facts and circumstances of the said case are entirely different from the facts and circumstances of the present case.

11. Learned counsel for the petitioner further submits that the charges framed under Section 324 IPC are not made out, since the weapon alleged to have been used at the time of the offence has not been recovered or seized by the Investigating Officer (IO), nor have any efforts been made to recover the same. Therefore, the ingredients of Section 324 IPC are not made out.

12. Learned Counsel for the petitioners placed reliance on *P.Vijiayan v. State of Kerela*, (2010) 2 SCC 398, *M.L.Meena v. State (CBI)*, (2015) 220 DLT 78, *Mani @ Manimaran v. State*, CRL. R.C No. 632/2012 and *State v. Shahnsha*, Case No. 28/2014, ASJ, Saket Courts, New Delhi.

13. *Per contra*, learned APP for the State, while opposing the aforementioned submissions made on behalf of the petitioners, submits that the learned Trial Court, after giving due consideration to all the facts and circumstances of the case and after considering the evidence placed on record before it, has rightly passed the impugned order. Thus, there is no illegality, irregularity or infirmity in the

impugned order dated 20.09.2022. Moreover, the order passed by the learned Appellate Court is well reasoned and deals with the contentions of Section 294 Cr.P.C. It is also stated by the learned APP for the State that there is no reason to discredit the oral evidences, which is supported by medical evidence. In relation to the non-recovery of the weapon of offence, it is stated that the same is a matter of trial, which the IO would have to explain during his examination.

14. Heard the learned counsel for the respective parties at length.

15. It is noted that the arguments of the petitioner are two-fold; Firstly, it has been contended that the application filed under Section 294 Cr.P.C, which was duly admitted by the learned Trial Court vide order dated 11.03.2022 was not taken into consideration while passing the impugned order dated 20.09.2022 passed by learned Appellate Court and order dated 01.06.2022 passed by the learned Trial Court. Secondly, it has been contended that the learned Appellate Court has wrongly upheld the order passed by the learned Trial Court wherein the charge under Section 324 IPC is improperly framed. It was contended that the learned Trial Court failed to appreciate the fact that the alleged weapon used in the crime has not been recovered by the Investigation Officer (IO) and the petitioner should have been discharged.

16. This court will first deal with the contentions in relation to Section 324 IPC, and thereafter, with the contentions related to the application filed under Section 294 Cr.P.C.

17. It must be noted that the law dealing with discharge and framing of charge is provided under Sections 227 and 228 of Cr.P.C., and the same is not being reproduced in this judgment for the purpose of brevity. While deciding whether charge be framed against an accused, the Court must look into the facts and circumstances of the case. Due consideration must be given to the material placed on record along with the investigation and the facts determined therefrom. From the information gathered, the Court will be required to ascertain whether the essential ingredients of an offence are *prima facie* made out. An in-depth appreciation of evidence and roving inquiry into the pros and cons of the case is not permitted as the Trial Court is not allowed to conduct a mini-trial while passing an order on charge. [See *Sajjan Kumar v. C.B.I.* (2010) 9 SCC 368; *Amit Kapoor v. Ramesh Chander* (2012) 9 SCC 460; *Asim Shariff v. National Investigation Agency* (2019) 7 SCC 148; and *Dipakbhai Jagdishchandra Patel v. State of Gujarat* (2019) 16 SCC 547]

18. In *State of M.P. v. Mohanlal Soni* (2006) 6 SCC 338, the Hon'ble Supreme Court observed that it is not necessary that the evidence presented must be enough to convict the accused; rather, the evidence must be sufficient enough to proceed against the crime.

19. In *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460, Hon'ble Supreme Court observed that the Legislature, in its wisdom, has used the expression "*there is ground for presuming that the accused has committed an offence*" and that there is an inbuilt element of presumption. It then referred to its judgment rendered in

the case of *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659. The relevant portion of decision in *Amit Kapoor* (supra) is as under: -

*“30.and to the meaning of the word "presume", placing reliance upon Blacks' Law Dictionary, where it was defined to mean "to believe or accept upon probable evidence"; "to take as true until evidence to the contrary is forthcoming". **"In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, incriminating material and evidences put to the accused in terms of Section 313 of the Code, and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the Court forming its final opinion and delivering its judgment...."***

(Emphasis Supplied)

20. Learned counsel for petitioners vehemently submitted that the offence punishable under Section 324 IPC is not made out since the alleged weapon used in the offence has not been recovered by the IO. This court is of the opinion that at the present stage, the learned Trial Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused or not. It is well settled that when there is evidence indicating strong suspicion against the accused, the Court will be justified in framing charge and granting the prosecution an opportunity to bring on record the entire evidence for the purposes of trial.

21. The petitioner had filed an application under Section 294 Cr.P.C. submitting additional documents on record (Certified Copies related to FIR bearing No. 139/2017), and learned Trial Court took

note of the same, admitting the documents on record vide order dated 11.03.2022. Further, the petitioners filed an application for discharge in Case No. 3036/2017 bearing FIR no. 140/2017 wherein, vide order dated 01.06.2022 learned Trial Court dismissed the application and proceeded to frame charges against the present petitioners under Section 324 and 34 IPC. Furthermore, petitioners filed a revision petition under Section 397 Cr.P.C before the learned Appellate Court which was also dismissed.

22. It was contended by the counsel for petitioners that the documents given on record vis-à-vis an application u/s 294 Cr.P.C were not looked into by the learned Appellate Court in the impugned order dated 20.09.2022, given the fact that the said application was admitted by the learned Trial Court vide order dated 11.03.2022.

23. It is noteworthy that present case is one wherein both the parties filed counter FIRs against each other. It is the case of the petitioners that on their way to meet some acquaintances, respondent nos. 2 & 3 and other people stopped and harassed them. It soon turned into a fight wherein respondent nos. 2 & 3 allegedly attacked the petitioners. Petitioners then called the PCR, and respondent nos. 2 & 3 absconded. Upon reaching the spot, PCR took the injured Petitioner No. 1 and 3 to a nearby hospital where the doctors conducted medical examination and prepared MLCs. On the following day, an FIR was lodged by the petitioners bearing no. 139/2017 for offences punishable under Sections 323/341/506 and 34 IPC.

24. *On the contrary*, it is the case of respondent nos. 2 & 3 that the petitioners and a few others came to an area of Sangam Vihar for political campaigning and were confronted by persons for the work done over the period of the past ten years by the elected councilor. Consequently, the petitioners attacked the persons, including respondent nos. 2 & 3, with a stick and sharp-edged weapon. After that, respondent nos. 2 and 3 went to the hospital to get treated & MLC was prepared. FIR bearing no. 140/2017 was lodged by respondent nos. 2 and 3 for offences punishable under Sections 324 and 34 IPC, whereupon cognizance was taken against the petitioners, and the case was committed to the Court of Sessions for trial.

25. The learned counsel for the petitioners had relied upon the case of *M.L Meena v. State (CBI), (2015) 220 DLT 78*. It is to be noted that the facts and circumstances of this case are not similar to the facts and circumstances of the present case and, thus, cannot be relied upon.

26. In *A.T. Mydeen v. The Assistant Commissioner, 2021 SCC OnLine SC 1017*, Hon'ble Supreme Court observed as follows:

“25. So far as the law for the trial of the cross cases is concerned, it is fairly well settled that each case has to be decided on its own merit and the evidence recorded in one case cannot be used in its cross case. Whatever evidence is available on the record of the case only that has to be considered. The only caution is that both the trials should be conducted simultaneously or in case of the appeal, they should be heard simultaneously. However, we are not concerned with cross-cases but are concerned with an eventuality of two separate trials for the commission of the

same offence (two complaints for the same offence) for two sets of accused, on account of one of them absconding”.

27. In ***State of M.P. vs Mishrilal, (2003) 9 SCC 426***, both parties lodged an FIR against each other regarding the same incident. The Apex Court, while giving guidance as to the procedure to be adopted in such cases, has observed as follows:

“It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathilal's case (supra). The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments.”

28. It is further noted that the learned Trial Court vide order dated 01.06.2022 has correctly referred to the decision of Hon’ble Supreme Court in ***Nathi Lal v. State of U.P, 1990 (Supp.) SCC 145*** wherein, the procedure which is to be followed in such a situation has been succinctly described, and the same is produced as under:

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case

cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other”.

29. This court is of the view that the procedure prescribed by the Apex Court in this regard is that both cases must be tried separately and independently be decided based on evidence led in each case without being influenced by the materials and evidence led in the other case. The procedure laid down is that first, the evidence should be recorded in one case, and both parties must be heard, but judgment should not be pronounced. Immediately after that, the other case should be taken up for the recording of evidence. Once the hearing is complete in both cases, both cases should be decided simultaneously by separate judgments. The impression is that if we follow the above-referred procedure, major concern of fair trial for both parties would be adequately addressed.

30. This court is of the view that since petitioners submitted certified copies of the documents pertaining to FIR bearing no. 139/2017 in regard to an application under Section 294 Cr.P.C, the same could not be looked into by the learned Appellate Court and the learned Trial Court as both have to be tried as the strength of its own facts and evidence led on record in each case, independently of each other. Regarding recovery of weapon of offence, it is a matter of trial and cannot become sole ground for discharge of an accused.

31. Considering the overall facts and circumstances of the case and the allegations and material available on record, this Court finds that the impugned order dated 20.09.2022 passed by learned Principal and Sessions Judge (South), New Delhi, in C.R. no. 270/2022 suffers from no irregularity, illegality, impropriety or perversity.

32. Accordingly, the present petition stands dismissed.

33. It is, however, clarified that the observations made by this Court are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case during the trial.

SWARANA KANTA SHARMA, J

JANUARY 17, 2023/kss

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