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

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Reserved on: 31.07.2023
Pronounced on: 21.08.2023

+ **CRL.M.C. 5247/2023 & CRL.M.A. 19928/2023**

YOGESH KUMAR VERMA & ORS. Petitioners

Through: Mr. Omkar Sharma, Advocate

versus

THE STATE & ANR. Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Rahul, P.S. Seelampur.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition has been filed on behalf of the petitioners under Section 482 Code of Criminal Procedure, 1973 ('Cr.P.C.') assailing order dated 30.11.2022 passed by learned Additional Sessions Judge, North-East, Karkardooma Courts, Delhi in Criminal Revision No. 30/2020 *vide* which order dated 03.03.2020 passed by learned Metropolitan Magistrate-02, North-East, Karkardooma Courts, Delhi, framing charges under Sections 323/341/452/506/143/147/148/149 of the Indian Penal Code 1860 ('IPC') and Sections



27/30 of Arms Act, 1959 ('Arms Act') in case arising out of FIR bearing no. 125/2013, registered at Police Station Seelampur, Delhi, was upheld.

2. The case of prosecution in brief is that on 14.03.2013, an information was received at P.S. Seelampur, Delhi that some persons had beaten one person namely Sh. Ishwar Chand at Shiv Mandir, double storey, New Seelampur, Delhi and upon reaching the spot, the concerned police official had found that the injured had already been taken to JPC Hospital, Shastri Park, Delhi. Upon reaching the hospital, the MLC of injured was collected and his statement was recorded, who informed that when he was sitting with the priest in the temple, the accused persons namely Yogesh Verma, Sonu, Sumit, Rinku and one other person had reached there and had started hurling abuses at him. Thereafter, the accused persons had started beating him with hockey sticks, etc, and had put a pistol like object in his mouth and had threatened to kill him. It was stated that when some people had gathered at the spot after hearing noise, the accused persons had run away. On these allegations, the present FIR was registered under Sections 323/341/506/34 of IPC. The supplementary statement of complainant was recorded on 13.05.2013 wherein two other persons i.e. petitioner nos. 6 and 7 were also named by the complainant/injured to have been involved in the commission of offence.

3. After completion of investigation, chargesheet was filed against all the accused persons under Sections 323/341/452/506/143/147/148/149 of IPC and Sections 27/30 of Arms Act. Charges



were framed against the accused persons under these Sections *vide* order dated 03.03.2020 by the learned MM. Aggrieved by the order passed by learned MM, the petitioners had approached the court of learned ASJ by way of a revision petition, however, the same was dismissed.

4. By way of present petition, the petitioners assail the aforesaid orders by way of which charges have been framed against them.

5. Learned counsel for the petitioners argues that petitioner nos. 6 and 7 were not named in the present FIR, and their names had come up in supplementary statement of the complainant recorded after two months from the date of registration of FIR. It is stated that an offence under Section 341 of IPC is not made out against any of the petitioners as there is no allegation about wrongful restraint. It is also stated that no offence under Sections 27/30 of Arms Act is made out since it was only alleged that the accused had put 'object like pistol' and not 'pistol' in the mouth of injured, and also because the alleged cartridge was not recovered from the possession of petitioner no. 1. It is further stated that offence under Section 148 of IPC, which deals with committing riots armed with deadly weapon, is not made out against the accused persons since there is only vague allegation about using a pistol like object and the alleged weapon was never recovered from the possession of petitioners and that the police had wrongly seized a licensed weapon of petitioner no. 1. Furthermore, no offences under Sections 452/143/147/148/149 of IPC are made out since there is lack of evidence that petitioners were a part of an



unlawful assembly and since the temple is not a residential property, it does not attract the provision of Section 452 of IPC.

6. *Per contra*, learned APP for State submits that chargesheet had been filed in the present case after in-depth investigation and there is sufficient material on record for framing charges against petitioners. It is argued that all the contentions raised on behalf of petitioners have already been dealt with by both the Courts below and there is no infirmity in the orders which have been impugned before this Court.

7. This Court has heard arguments addressed by both the parties and has perused the material on record.

8. The concluding portion of the order dated 03.03.2020 *vide* which charges were framed against petitioners by the learned MM, reads as under:

“Considering the material on record, *prima facie* sufficient ground exists for framing of charge against the accused persons for offence under Sections 323/341/452/143/147/148/149 of IPC and under Sections 27/30 of Arms Act, 1959 and no ground for discharge at this stage is made out...”

9. Further, the relevant portion of impugned order dated 30.11.2022 passed by learned ASJ, whereby criminal revision petition filed on behalf of petitioners was dismissed, is reproduced as under:

“...Cumulative effect of this discussions is that this court does not find any force on the submissions made by the Ld. Counsel for the petitioners/accused and this court has come to the conclusion that the Ld. trial court had rightly passed the



impugned order for framing the charges in the above said sections against the accused and this court does not find any illegality perversity in the impugned order under revision, which requires any interference therein. Therefore, the impugned order under revision is upheld and the revision petition filed by the petitioners/accused is dismissed...”

10. As far as statutory law on framing of charge and discharge is concerned, the same is governed by Section 228 and 227 of Cr.P.C. respectively.

11. The principles and considerations to be kept in mind while deciding as to whether an accused should be charged or discharged have been laid down in catena of judgments by the Hon’ble Apex Court, which were reiterated and referred to in the recent decision in case of ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey & Ors.*** 2022 SCC OnLine 913. The relevant portions of the said decision are extracted as under:

“23. In ***Sajjan Kumar v. CBI*** [(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court had an occasion to consider the scope of Sections 227 and 228 CrPC. The principles which emerged therefrom have been taken note of in para 21 as under: (SCC pp. 376-77)

“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.”*

25. In the case of **Asim Shariff v. National Investigation Agency**, (2019) 7 SCC 148, this Court, to which one of us (A.M. Khanwilkar, J.) was a party, in so many words has expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. We quote the relevant observations as under:-

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, 3 2018(13) SCC 455 4 2019(6) SCALE 794 the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

(emphasis supplied)

12. This Court is of the opinion that as far as the contention of the learned counsel for the petitioners regarding the offence under Section 452 of IPC that it was not a residential premises but the public property being the temple is concerned, this Court does not find any infirmity in the finding of learned MM as well as learned ASJ that as per the definition of house trespass under Section 442 of IPC, it is committed by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a custody of property. A perusal of the case file shows that the allegations against the accused persons are that they had trespassed into the Shiv Mandir i.e. a place of worship and had assaulted and caused injuries to the complainant, thereby falling under the definition of house trespass under Section 442 of IPC.

13. Regarding the contention of learned counsel for the petitioners that no charge is made out under Sections 143/147/148/149 of IPC, this Court is in agreement with the finding of both the Courts below



that in the present case, chargesheet had been filed against seven accused persons after the completion of the investigation. In the initial complaint dated 14.03.2013, the complainant had levelled specific allegations against five accused persons and pursuant to recording of his supplementary statement, two more accused persons were named in the present case. The case of prosecution is that the accused persons after forming an unlawful assembly, had trespassed in the room of temple along with weapons such as hockey sticks, etc., and had restrained the complainant and in furtherance of their common object, they had also caused injuries to the complainant. It is also the case of the prosecution that the accused Yogesh Kumar had threatened the complainant by putting the barrel of the pistol in his mouth and thus, this Court finds no infirmity in the findings of both the learned MM and learned ASJ in this regard. It has been rightly observed by the learned ASJ that the FIR is not an encyclopaedia, and even if at the time of registration of FIR only five persons were named and two were named later on during the investigation, it cannot become a ground for discharge.

14. As far as the other submission of learned counsel that an offence under Sections 27/30 of the Arms Act is not made out against the accused is concerned, this Court is in agreement with the reasons recorded in the order passed by learned MM. In the present case, a live cartridge was found at the place of occurrence i.e. the temple, and was handed over to the police. The pistol used by the petitioner Yogesh was recovered from him. The FSL report regarding the recovered cartridge being loaded into and fired from the pistol of the



accused has already been filed on record, and therefore, there is no infirmity in the charges framed under the aforesaid sections against the accused persons.

15. In view of the foregoing discussion, this Court finds no error or infirmity in the orders dated 03.03.2020 and 30.11.2022 passed by learned MM and learned ASJ, respectively, and thus, no case is made out for quashing/setting aside the impugned orders.

16. Accordingly, the present petition along with pending application stands dismissed.

17. It is however clarified that this Court has not given any opinion on merits of the case and the observations made herein-above are only for the purpose of deciding the present petition.

18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 21, 2023/dk