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

Reserved on: 8th, December, 2022
Pronounced on: 5th January, 2023

+ **CRL.M.C. 2607/2014**

SHABBIR MALIK

..... Petitioner

Through: Mr. Jayant Bhatt with Mr. Hamid Khan, Ms. Deepali Suri, Ms. Vaidehi Singh, Mr. Himanshu Sihag and Mr. Gargie Boss, Advocates

Versus

STATE & ANR

..... Respondents

Through: Mr. Hitesh Vali, APP for State
Mr. Vivek Kumar, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

1. The present petition under Section 482 Cr.P.C., seeks setting aside of the order dated 31.03.2014 passed by Mr. Praveen Kumar, Special Judge, PC

Act, CBI-III, Rohini Courts, Delhi in Criminal Revision Petition no. 04/2017 arising out of FIR No. 221/2008 under Sections 408/420/506/120-B IPC, registered at PS Sultanpuri.

2. The impugned order passed by the learned Special Judge allowed the revision petition filed by respondent no. 2 herein, against an order on charge dated 16.12.2013 passed by Sh. Sumedh Kumar Sethi, learned Metropolitan Magistrate, North-West, Rohini, Delhi whereby the said respondent alongwith other co-accused persons were charged for the offence under Section 506 of IPC.

3. The relevant facts for the adjudication of the present petition are as follows:

- i. The petitioner herein, was doing business of Metals and Irons under the name and style of M/s S.M.Traders and had a godown at I/2/33-34, Budh Vihar, Phase-II, New Delhi. One Ushpaq/Aspak, was employed as Supervisor-cum-Store Keeper at the said godown. It is alleged that on 20.12.2007, goods worth Rs. 24-25 Lacs belonging to the petitioner went missing from the aforesaid godown. It is further alleged that on inquiry from Ushpaq/Aspak it was revealed that he alongwith Firoz Khan and Rifat Khan (respondent no. 2) had sold missing goods to some kabaadi without petitioner's permission.
- ii. It is further alleged that the petitioner warned the three accused persons including the respondent no. 2 herein, of lodging a complaint but offered pardon to them on their returning the entire sum of money within 10-15 days. It is further alleged that after 15 days, petitioner visited the house of said Ushpaq/Aspak for the said purpose, however, latter excused himself on the pretext of calling Firoz Khan and Rifat Khan (respondent

- no. 2), but never came back.
- iii. It is alleged that on 16.01.2008, the respondent no. 2 alongwith Ushpaq/Aspak and Firoz Khan barged into the house of petitioner, alongwith 3-4 gundas, armed with revolver and threatened the petitioner and his family. It is alleged that they put revolver on the chest of the petitioner and said, *“Agar tumne dobara paise mange to jaan se maar denge, paiso ko bhulkar apne bachho ka khyal kar.”*.
- iv. Thereafter, it is alleged that respondent no. 2 alongwith aforesaid accused persons started beating the petitioner. It is also stated that, one Anil Kumar intervened to save the petitioner. It is further alleged that, respondent no. 2 alongwith others left the spot threatening the petitioner with dire consequences, if he informed the police of the said incident. The petitioner filed complaints, on 11.02.2008 and 15.02.2008, regarding the incident to the SHO and other senior officers including DCP, however, no action was taken.
- v. On a complaint filed by the petitioner under Section 156 (3) Cr.P.C., the learned Additional Chief Metropolitan Magistrate, gave a direction to register a FIR and consequently FIR No.221/2008 was registered at PS Sultanpuri, on 28.03.2008 under Sections 408/420/506/120B IPC. After investigation of the said FIR, chargesheet was filed before the court of learned Metropolitan Magistrate under Sections 408/420/506/120B IPC.
- vi. At the stage of charge, the learned Metropolitan Magistrate passed an order dated 16.12.2013, whereby respondent alongwith other accused persons were charged only for the offence under Section 506 of IPC and co-accused Ushpaq/Aspak was charged for offence under Section 408 of IPC. The learned Metropolitan Magistrate in the order dated 16.12.2013

recorded as under:

“.... Section 506 IPC provides for punishment for criminal intimidation. There are specific allegations against all three accused persons in this regard in the original complaint as well as statement U/s. 161 Cr. P.C. of PW Anil Kumar. Counsel for accused persons has pointed out discrepancies in his initial statement and his supplementary statement. However, counsel for complainant has relied upon the case of Jagdish Nautyal Vs. State 2013 (3) JCC 1856 where it has been held that at the stage of framing of charge, trial Court is required to examine evidence brought before it only for the limited purpose of deciding as to whether a prima facie case has been made out against the accused or not. The judge is not required to sift entire evidence and discuss relevant merits and demerits thereof to arrive at conclusive decision.

It is pertinent to note that prima facie evidence on record in the present case shows that offence U/s. 506 IPC appears to have been committed by all accused persons. The allegations regarding criminal intimidation are specific and any discrepancies pointed out by counsel for accused persons can only be deliberated upon at the stage of evidence after the charges are framed. Thus, charges are liable to be framed against all accused persons U/s. 506 IPC and against accused Aspak in particular U/s. 408 IPC.”

- vii. The respondent no. 2 herein challenged the aforesaid order dated 16.12.2013, vide Criminal Revision no. 04/2014 wherein the learned Special Judge passed the impugned order dated 31.03.2014, discharging the respondent no. 2 for committing offence under Section 506 of IPC, hence the present petition.

4. Learned counsel appearing on behalf of the petitioner, submits that the learned Special Judge has disregarded the well established principles regarding consideration on the point of charge. It has been further submitted by learned counsel for the petitioner that the learned Special Judge ignored the consistent and specific allegations made by the petitioner *qua* respondent no. 2 and erred in looking at the minor contradiction in the statement of PW Anil Kumar,

recorded under Section 161 Cr.P.C.

5. Learned counsel for the petitioner has relied upon Sajjan Kumar v. CBI, (2010) 9 SCC 368 and State v. J. Doraiswamy and Others (2019) 4 SCC 149, in support of the present petition.

6. Per contra, learned counsel for respondent no. 2 submits that the learned Sessions Court correctly appreciated the contradiction in the two statements of PW Anil Kumar recorded under Section 161 Cr.P.C, and therefore, has rightly discharged the present respondent.

7. Heard learned counsel for the parties.

8. The learned Special Judge in the impugned order dated 31.03.2014 has observed as under:

“5. I have gone through the record. In the complaint dated 19.03.2008 filed by the respondent no. 2 herein, it is mentioned that it was one of accomplices who had put the revolver on the chest of the complainant. However, the description of the said person has not been mentioned in the said complaint. PW Anil Kumar has given contradictory version in his two statements recorded under Section 161 Cr.P.C. he has categorically stated that accused Aspak, Firoz Khan and Rifat Khan were known to him and he had seen them many times prior to the incident. In supplementary statement recorded under Section 161 Cr.P.C., PW Anil Kumar has stated that he saw Rifat Khan for the first time on the day of incident. In Para-12 of the above-referred complaint, it is stated that it was accused Aspak, Firoz Khan and Rifat Khan who gave beatings to the complainant while PW Anil Kumar in his statement recorded under Section 161 Cr.P.C. has stated that beatings to Shabir Khan (respondent no. 2 herein) were given by all of them i.e. accused and other accomplices.

6. Though not referred or relied upon, our Apex Court in **Union of India Vs. Prafulla Kumar Samal**, (1979) 3 SCC 4, has held that :

The Court has power to sift and weigh the evidence-although for the limited purpose of finding out whether a prima facie case against the accused has been made out or not.

7. In **Prafulla** (supra), it has also been held that where materials placed before the Court disclosed grave suspicion against the accused which has not been properly explained, the Court would be fully justified in framing a charge and proceeding with the trial. By and large, however, if two views are equally possible and the judge is satisfied that the evidence produced before him gives rise to some suspicion, but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In view of non-mentioning of the description of the person who had placed the revolver on the chest of the respondent no.2 and the discrepancies in the statements of PWs referred to hereinabove in Para 5, this Court is of the view that there is no strong suspicion for the commission of offence under Section 506 IPC against the petition herein and, thus, no prima facie case can be said to be made out against him. Therefore, the revision petition is hereby accepted. The petitioner herein is hereby discharged for committing offence under Section 506 IPC. A copy of this order be sent to the Trial Court for information and necessary action. The revision file be consigned to Record Room.”

9. For the sake of completeness, the relevant portion of the translated version of statement of PW Anil Kumar is reproduced as under:-

“Statement of Shri Anil S/o Shri Karan, R/o House No.G-9, Auchandi Road, Bawana, Delhi, under Section 161 Cr.P.C.

On 16.01.2008, I was present at the house of my friend Shabbir Malik and in no time 6-7 persons came and started to say to Shabbir Malik that you forget your money. Then Shabbir Malik said that why you are not giving my money, then one of them removed revolver and put on the chest of Shabbir Malik and threatened that if you asked for your money, we will kill you and you forget your money and think about your children and then they all started to beat Shabbir Malik and threatened him to kill. With great efforts I reconciled and after that by going they all were giving threat to kill him and they said that if you made phone to police, we will not leave you. These all incidents took place in presence of me. All of them, I know very well to Ashfaq, Firoz and Rafat Khan, because I have seen the all three many times before and I knew their name afterwards.”

“Supplementary Statement of Sh. Anil S/o Sh. Karan Singh Bhardwaj, R/o House No.G-9, Auchandi Road, Bawana, Delhi, under Section 161 Cr.P.C. (Ph. No. 9313481283, 9818059786) .

In reference to my previous statement, I further states that on 16.01.2008 at about 3.30 - 4.00 PM when I was in the house of Shabbir Malik situated at Sector-1, Rohini, at the same time I had my mobile No.9818059786. I stayed there about one hour. I went there for discussing the business. After sometimes reaching of me, Ashfaq and his brother Firoz had come there with some other persons. I already know Ashfaq and Firoz. I had seen Rifat Khan first time that day. I do not know that these people had come themselves or on calling of Shabbir Malik and what was the purpose of their visit. If that day my phone location do not show the location of Rohini, then it is the possibility that I would have my other phone No.9313481283. Except these two phone numbers, I do not have other third phone number. But out of the both phone number, I would must have my one number. That day Ashfaq, Firoz etc visited suddenly at the house of Shabbir Malim and stayed there about 15-20 minutes.”

10. Admittedly, the petitioner had made a categorical averment to the effect that the present respondent alongwith other two accused persons and other unknown persons had barged into his house and had threatened him while one of the unknown person was armed with a revolver. Even PW Anil Kumar in his supplementary statement stated that he had seen respondent no. 2 on the day of incident. This portion of the statement made by PW Anil Kumar corroborates the complaint made on behalf of the petitioner and a contradiction to the effect whether he had seen respondent no. 2 prior to the date of incident or not is immaterial at the present stage for consideration of charge. It is further pertinent to note that PW Anil Kumar in his first statement under Section 161 Cr.P.C., corroborated the incident of extending threat to the petitioner/complainant with help of a firearm. It is well settled that at the stage of charge, the court has to look at the prima facie case and cannot evaluate the

credibility of any witness. Even if there is a minor contradiction, the same has to be put to the witness which can only be done in course of a trial. The scope of scrutiny as envisaged under the provision of Section 239 of Cr.P.C., is very limited and provides as under:

“239. When accused shall be discharged.

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

11. The aforesaid provision has been the subject matter of a catena of judgments, where it has been categorically held that the entire material placed on record in support of a chargesheet will be taken on its face value at the stage of framing of charge. In fact, Section 239 Cr.P.C., which regulates the trial of warrant cases on police report by Magistrate, specifically provides that the Magistrate can discharge the accused, if the charge against the latter is groundless.

12. In the recent judgment, the Hon’ble Supreme Court of India, in State Through Deputy Superintendent of Police v. R. Soundirarasu etc., 2022 SCC OnLine SC 1150 has held as under:

“75. The ambit and scope of exercise of power under Sections 239 and 240 of the CrPC, are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be “groundless”. The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence

is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless.

76. This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be “groundless”.

77. The word “ground” according to the *Black's Law Dictionary* connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the accused or foundation for the admissibility of evidence. Seen in the context, the word “groundless” would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever.”

13. Applying the aforesaid legal position to the facts of the present case, it is clear that the learned Special Judge erred in discharging respondent no. 2 under Section 239 Cr.P.C. The learned Metropolitan Magistrate while passing the order on charge, dated 16.12.2013, had correctly appreciated the facts and the evidence on record and framed charges against present respondent under Section 506 of IPC.

14. This court has perused the record of the present case. The statement of the petitioner with respect to the presence of respondent no. 2 alongwith other accused persons and other unknown persons armed with a firearm and statement of PW Anil Kumar confirming same on the day of incident, prima facie discloses commission of offence under Section 506 read with Section 34 IPC. Accordingly, the impugned order dated 31.03.2014, passed by Mr. Praveen Kumar, Special Judge, PC Act, CBI-III, Rohini Courts, Delhi in Criminal Revision Petition no. 04/2017, arising out of FIR No.221/2008 under

Sections 408/420/506/120-B IPC, registered at PS Sultanpuri is set aside and the present petition is allowed and the order dated 16.12.2013 passed by Mr. Sumedh Kumar Sethi, learned Metropolitan Magistrate, North West, Rohini, Delhi, is hereby restored.

15. The petition is allowed and disposed of accordingly.

16. Pending application(s), if any, also stand disposed of.

**AMIT SHARMA
JUDGE**

JANUARY 5, 2023/hb

