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

% *Date of decision: September 21, 2023*

+ **CRL.REV.P. 123/2017**

STATE

..... Petitioner

**Through: Mr. Yudhvir Singh Chauhan, APP
for State with Insp. Govind Rawat,
P.S. New Usmanpur.**

V

RAJU @ LOKPAL & ORS

..... Respondents

**Through: Mr. Akhil Sharma and
Ms. Shreenidhi, Advocates(through
VC).**

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The criminal revision petition is filed under section 397 Cr.P.C read with section 401 Cr.P.C to impugn the order dated 17.08.2016 passed by the court of Sh. Sanjay Sharma, ASJ/Special Judge, NDPS, North-East District, Karkardooma Courts, Delhi whereby the respondents were discharged for the offence punishable under sections 308/34 IPC in sessions case bearing no. 07(I)/16 titled as **State V Raju @ Lokpal& Ors.**, arising out of FIR bearing no.0288/2013 registered at P.S Usmanpur.

2. The respondents were charge-sheeted for the offences punishable under sections 308/323/341/34 IPC after conclusion of investigation in pursuance of FIR bearing no.0288/2013 on the allegations that on



04.09.2013, the respondents inflicted injuries to the complainant/injured Bittu, Tinku, Praveen, Mohan Sharma and Ram Bharat by using iron rod and *danda*.

3. The court of Sh. Sanjay Sharma, ASJ/Special Judge (NDPS), North-East District, Karkardooma Court, Delhi vide order dated 17.08.2016, discharged the respondents for the offence punishable under sections 308/34 IPC and opined that a *prima facie* case is made out against the respondents for the offences punishable under sections 323/341/34 IPC. The relevant portion of the order dated 17.08.2016 is reproduced as under:-

“14. Therefore, the most important circumstance in a case under section 308 would be that an act should have been committed with intention or knowledge to commit culpable homicide not amounting to murder. The complainant and the accused persons are residents of the same locality. They had no previous hostility. The complainant Bittu had given his computer to the accused Pawan @ Kalu and Dharamjial for repair. On the date of incident, lie had gone to their shop for receiving his computer. The incident in question had taken place at a spur of moment. The accused Pawan @ Kalu and Dharampal had no intention to cause any injury to the complainant Bittu and his friend Tinku. The accused Pawan @ Kalu picked a danda which was lying outside his shop.

15. The injuries sustained by the complainant Bittu and other injured persons are not such that they could in any manner result in the death of the injured persons. The injuries were caused by a blunt object. The injuries were in the form of laceration on head. None of the injury appears to be serious or dangerous. The injured Tinku received 3 cm x .05 cm laceration on left temporal region. He was conscious and oriented. The injured Praveen had a



mere abrasion on right temporal parietal region. The complainant Bittu had a mere swelling on his forehead and left cheek. The injured Mohan Sharma had laceration over left temporal region. None of the injured required hospitalisation. Merely because injuries were found on the head, it cannot be said that such injuries were caused with the intention or knowledge to commit culpable homicide not amounting to murder. The evidence and circumstances of the case otherwise show that there was no intention or knowledge on the part of the accused persons to cause such injuries which would have resulted in the death of the complainant as a result of which they would have been guilty of murder or culpable homicide not amounting to murder.

16. For the foregoing reasons, I am of the considered opinion that the accused persons can not be charged for an offence punishable under Section 308/34IPC,

17. However, the facts and circumstances of the case disclose prima facie commission of offences under section 323/341/34 IPC.”

4. The Additional Public Prosecutor for the State/petitioner argued that the injuries were inflicted on the head, which is a vital part of the body by using an iron rod and *danda* and during the course of arguments, he also referred the contents of FIR wherein, the complainant stated that the respondents inflicted injuries to him and other injured with an intention to cause their death.

5. The Chapter XVIII of the Cr.P.C. deals with trial before a Court of Session. Section 227 deals with situation when the accused shall be discharged. Section 228 deals with framing of charge. Sections 227 and 228 of Cr.P.C. of reads as under:-



227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

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, 3 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such 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.

6. The purpose of framing a charge is to intimate the accused about the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial as observed in **V.C. Shukla V State through C.B.I.**, 1980 Supp SCC 92. The prosecution is required to establish a prima facie before a charge can be framed. The Supreme Court in **Union of India V Prafulla Kumar Samal & another**, (1979) 3 SCC 4 considered scope of inquiry at the stage of framing of charge as per section



227 of the Code in Sessions criminal trial and observed as under:-

- (1) That the Judge while considering the question of framing the charges under section 227 of the Code 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.
- (2) 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.
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
- (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

7. The Supreme Court in **Sajjan Kumar V CBI** (2010) 9 SCC 368 has provided guidelines relating to the scope of sections 227 and 228 Cr.P.C which reads 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.

7.1 The Supreme Court in **Asim Shariff V National Investigation Agency**, (2019) 7 SCC 148 expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The Supreme Court in **State of Karnataka V M.R. Hiremath**, (2019) 7 SCC 515 held that it is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. The Supreme Court in **Ghulam Hassan Beigh V Mohammad Maqbool Magrey & Others**, Criminal Appeal No. 001041 of 2022 (Arising Out of S.L.P. (Criminal) no 4599 OF 2021) decided on 26th July, 2022 observed as under:-

Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of



framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See: *Bhawna Bai v. Ghanshyam*, (2020) 2 SCC 217).

8. The issue which needs judicial consideration is that whether on the basis of the material collected during investigation, the offence punishable under section 308 read with section 34 IPC is actually made out or not.

9. In *Ramesh V State* 2010 (I) JCC 796, this Court altered the conviction from 308/34 to 323/34 by holding that assault was not premeditated and merely because an injury was found on the head, it cannot be said that such an injury was caused with the intention to commit culpable homicide. In *Sunder V State* 2010 (1) JCC 700, this Court altered the conviction of the appellant from Section 308 to 323 IPC by holding that in order to prove offence under Section 308 IPC, prosecution was required to prove that the injury was caused with such intention or knowledge and under such circumstances that if it had caused death, the act of appellant would



have amounted to culpable homicide not amounting to murder. In **Raju @ Rajpal and others V State of Delhi** 2014 (3) JCC 1894, this Court altered the conviction from Section 308 to 323/34 by holding that the nature of injuries were simple and injuries were not caused with the avowed object or knowledge to cause death. In **Ashok Kumar and another V State of Delhi** Crl. Appeal No. 17/2011 decided on 20.02.2015, this Court altered the conviction of Section 308 IPC to Section 323/34 IPC and held that injuries were opined by the doctor as simple caused by a blunt object. Nature of injuries is not such which will be sufficient to indicate that the appellants had any intention or knowledge that by this act they would have caused death of complainant. In **Pawan Chaddha V State** Criminal Appeal 640/2011 decided on 27.01.2016 by this Court, the appellant was convicted for offence under Section 308 and Section 323/34 IPC while the co-accused were held guilty and convicted under Section 323/34 IPC. As per the MLC following injuries were observed on person of the complainant:-

- (i) **CLW 8x2x.5 cms over central parieto occipital region.**
- (ii) **Swelling and tenderness right forearm and wrist.**
- (iii) **Abrasion 1x1 cm over right wrist.**

One of issues which arises for consideration is whether the act of appellant in causing injuries on the person of the victim, attracts ingredients



of offence under Section 308 IPC. It was observed as under:-

In order to constitute an offence under Section 308 IPC it is to be proved that the said act was committed by the accused with the intention or knowledge to commit culpable homicide not amounting to murder and that the offence was committed under such circumstances that if the accused, by that act, had caused death, he would have been guilty of culpable homicide. The intention or knowledge on the part of the accused, is to be deduced from the circumstances in which the injuries had been caused as also the nature of injuries and the portion of the body where such injuries were suffered. In this case, no previous enmity or dispute between the appellants and the complainant could be proved. There was no premeditation. The quarrel had taken place on a trivial issue. The nature of injuries suffered by the complainant was opined to be simple caused by blunt object. Apparently, the injuries were not caused with the avowed object or knowledge to cause his death.

It was further observed that the Trial Court has convicted the appellant under Section 308 IPC on the ground that the appellant initially hit the complainant with a *saria* and again given a blow with a wooden leg of the cot on vital part of the body i.e. head. There was no premeditation. The entire incident took place on the spur of the moment. Injuries were opined to be simple. The ingredients of Section 308 IPC are not attracted and the case falls within the ambit and scope of section 323 IPC.

10. This court in judgments titled as **State V Vijay Yadav & another** in CRL.L.P. 465/2019 and **State V Kamlesh Bahadur** in CRL.L.P. 515/2019 has reduced the sentence of the accused.



11. It is reflecting that the injuries stated to be received by the complainant as well as the injured were in the form of laceration on head and none of the injuries appear to be serious and dangerous. The injured Tinku received 3 cm × .05 cm laceration on left temporal region and he was found to be conscious and oriented. The injured Praveen received a mere abrasion on right temporal parietal region. The complainant Bittu was having a mere swelling on his forehead and left cheek.

12. The trial court has rightly opined that mere injuries found on head cannot be said that the injuries were caused with an intention of committing the culpable homicide not amounting to murder. The impugned order dated 17.08.2016 passed by the trial court is well-reasoned and does not call for any interference.

13. Hence, the present petition, stands dismissed.

14. Copy of this order be sent to the trial court for information.

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 21, 2023

N/SD