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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 13.02.2023

Pronounced on: 20.03.2023

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CRL.REV.P. 1158/2018

STATE

..... Petitioner

Through: Mr. Naresh Kumar Chahar,
APP for State with SI Amit,
P.S. Madhu Vihar.

versus

ARUN TYAGI & ORS.

....Respondents

Through: Mr. Gaurav Malhotra,
Advocate for R-1 & 2.
Mr. Mayank Sharma
and Mr. Anshul
Kulshreshtra, Advocates
for R-3.

CRL.REV.P. 232/2019

STATE (NCT) OF DELHI

.....Petitioner

Through: Mr. Naresh Kumar Chahar,
APP for State with SI Amit,
P.S. Madhu Vihar.

versus

ARUN TYAGI & ORS.

.....Respondents

Through: Mr. Gaurav Malhotra,
Advocate for R-1 & 2.
Mr. Mayank Sharma and Mr.
Anshul Kulshreshtra,
Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. Since both Crl.Rev.P. 232/2019 and Crl.Rev.P. 1158/2018 arise out of same set of facts and contentions and the issue before this court in both the petitions is inter-connected, the same are being decided through this common judgment.

2. The State has preferred the present revision petitions under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter 'Cr.P.C.'*) seeking setting aside of impugned orders passed by learned Additional Sessions Judge-03, Shahdara District, Karkardooma Court, Delhi (*hereinafter 'learned ASJ'*) in Sessions Case No. 412/2017 whereby, *vide* order dated 25.09.2018, the learned ASJ had allowed the application filed by the respondents to take on record certain documents as a part of their arguments on charge and thereafter, had discharged the respondents *vide* order dated 17.11.2018 in FIR bearing no. 764/2014, registered at Police Station Madhu Vihar, East Delhi for offences punishable under Sections 393/354/34 of the Indian Penal Code, 1860 (*hereinafter 'IPC'*).

3. Briefly stated, the present FIR was registered on 08.07.2014 on the basis of complaint lodged by the complainant who had alleged that on 09.05.2014, she along with her husband had gone to a park for morning walk and exercise and while the complainant was exercising, a stone had hit her. It was stated that when she had gone to look for the person who had thrown stone at her, it had turned out to be respondent no.1, who had then caught hold of the complainant

and all of a sudden, respondent no. 2 and respondent no. 3 had also come out, who were hiding behind cars. It was alleged that respondent no. 1 had thrown the complainant on the ground and respondent no.3 had beaten the complainant with shoes and had inappropriately touched her. It was further alleged that all the respondents had threatened the complainant and had asked her to take back the cases filed against them. The complainant had also alleged that respondent no.1 had pulled out a gun and threatened to kill the complainant, and had torn her clothes as well. Subsequently, the respondents had fled the spot upon seeing the husband of complainant and after she had raised the alarm.

4. During the course of proceedings before the learned ASJ, the counsel for respondent no. 3 had moved an application dated 22.03.2018 under Section 227 Cr.P.C. seeking discharge as well as to file certain documents. Learned ASJ *vide* impugned order dated 25.09.2018, being satisfied by the documents filed on behalf of respondent no.3, allowed the application and took on record the documents before hearing the arguments on charge. The relevant portion of the said order reads as under:

“...In my view all the documents as referred above are very much essential for deciding the question of charge. Accordingly, I allow the application and these documents are taken on record. This application is allowed and the document i.e complaint dated 08.05.2014 recorded vide DD no.29B at PS Madhu Vihar as well as FIR. no.669/14 registered in the same PS shall form part of the record...”

5. By way of impugned order dated 17.11.2018, the learned ASJ, after hearing the arguments on charge and considering the case of prosecution as well as the documents filed by the respondents, was pleased to discharge all the respondents. The relevant portion of the said order reads as under:

“3. In light of the background of the incidents wherein two successive FIRs were lodged in the year 2013 and 2014 at the instance of accused Saira against husband of complainant, I have no doubt left in my mind that the present FIR was lodged solely with a view to create pressure on the accused persons herein who happened to be prosecutrix and important public witnesses in the FIR lodged against husband of complainant. It would not be out of place to mention here that both the FIRs lodged against husband of complainant have been compounded after a settlement had taken place between Saira Anees and husband of complainant. The complainant and her husband who were present in the court on previous occasions had requested me to drop the proceedings in the present case qua accused Saira Anees. Not only this, as mentioned in order dated 27.03.2018, IO has cited at least two witnesses in the present FIR, both of whom are residing of same apartment in the park of which the alleged incident had taken place on 09.05.2014. They have stated in clear terms that no incident as alleged by prosecutrix had taken place on 09.05.2014. Rather, after incident dated 08.05.2014 relating to misbehaviour by Kuldeep Aggarwal with Saira Anees (which consequently resulted in registration FIR No.669/14 against him), none of the persons who are accused herein had even visited the park.

5. Under these circumstances, in my view, there is no prima facie case existing against any of the accused

persons. I, therefore, discharge all of them of the offences in question...”

6. Aggrieved thereof, the State has preferred the present petitions assailing both the abovesaid orders passed by learned ASJ.

7. Learned APP for the State vehemently submits that learned ASJ has erred in allowing the application filed by the respondents/accused persons and taking on record the documents filed by them, which were in relation to an incident that took place on 08.05.2014 for which a separate FIR bearing no. 669/14 was registered at Police Station Madhu Vihar, Delhi. It is stated that these documents are in no way connected with the present case and could not have been relied upon to discharge the respondents. To buttress his contentions, learned APP has placed reliance on the decision of Hon’ble Apex Court in *State of Orissa v. Debundra Nath Padhi* (2005) 1 SCC 568. It is argued that there is enough material on record to make out a *prima facie* case against the accused persons and charges ought to be framed against them. It is stated that merely because an FIR was lodged by the respondents previously against the present complainant cannot be a ground to hold that present FIR is frivolous and counter-blast to the same, at the stage of charge.

8. Learned APP for the State further argues that it is settled law that at the stage of framing of charge, the truth, veracity and effect of the evidence proposed to be adduced is not meticulously judged and the test at this stage is only limited to presuming that the accused had committed the offence. It is vehemently submitted by APP for the state that individual conscience of the court is connected with larger

consciousness of justice and the objectivity is the connecting link, and in the present case, there is no objectivity in the impugned order dated 07.11.20218 since learned ASJ failed to appreciate the facts and circumstance of the present case and the same is based on presumption, conjectures and surmises and as such cannot stand the scrutiny of law and thus is liable to be set aside.

9. *Per contra*, learned counsel for the respondents submits that learned ASJ, after giving due consideration to all the facts and circumstances of the present case and after considering the evidence placed on record before it, has rightly passed both the impugned order, and that there is no illegality, irregularity or infirmity in the same. Reliance in this regard is also placed on decision of ***Nitya Dharmananda v. Shree Gopal Salem Reddy (2018) 2 SCC 93.***

10. This Court has heard learned counsels for both the parties at length and has perused the material on record.

11. The arguments of the petitioner are twofold; *firstly*, it has been contended that the application filed by the respondents for filing additional documents before hearing arguments on charge was wrongly allowed by the learned ASJ *vide* order dated 25.09.2018, and *secondly*, that the said documents were taken into consideration while passing the impugned order dated 17.11.2018 whereby the respondents were discharged on the basis of the additional documents filed by them, without appreciating facts and circumstances of the present case.

12. At the outset, in order to appreciate the contentions raised on behalf of petitioner, this Court takes note of the decision rendered by

Three-judge Bench of Hon'ble Apex Court in *Debundra Nath Padhi* (*supra*) wherein it was held that at the stage of framing of charge, the accused has no right to produce any material and trial courts cannot consider any material produced before it by an accused. The relevant observations of Hon'ble Apex Court read as under:

“8. What is to the meaning of the expression 'the record of the case' as used in Section 227 of the Code. Though the word 'case' is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit 'the case' to the Court of Session and send to that court 'the record of the case' and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

18. ...It is well-settled that at the stage of framing of charge, the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge, if the contention of the accused is accepted despite the well-

settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well-settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police”.

13. Similarly, the Hon’ble Apex Court in *M.E. Shivalingamurthy v. Central Bureau of Investigation* (2020) 2 SCC 768, had also held that at the stage of charge, only the materials brought on record by prosecution have to be considered. The relevant portion of the judgment is reproduced as under:

“18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 Cr.P.C. (See *State of J&K v. Sudershan Chakkar*). The expression, "the record of the case", used in Section 227 Cr.P.C., is to be understood as the documents and the articles, if any, produced by the prosecution. **The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police** (See *State of Orissa v. Debendra Nath Padhi*).

28. It is here that again it becomes necessary that we remind ourselves of the contours of the jurisdiction under Section 227 of the Cr.P.C. The principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would enure to the benefit of the accused warranting the Trial Court to discharge the accused.

29. It is not open to the accused to rely on material by way of defence and persuade the court to discharge him.

30. However, what is the meaning of the expression "*materials on the basis of which grave suspicion is aroused in the mind of the court's*", which is not explained away? Can the accused explain away the material only with reference to the materials produced by the prosecution? Can the accused rely upon material which he chooses to produce at the stage?

31. In view of the decisions of this Court that the *accused can only rely on the materials which are produced by the prosecution*, it must be understood that the grave suspicion, if it is established on the materials, should be explained away only in terms of the materials made available by the prosecution. No doubt, the accused may appeal to the broad probabilities to the case to persuade the court to discharge him."

(Emphasis supplied)

14. Thus, as a general rule, the defence of accused cannot be taken into consideration at the stage of charge, and only the material submitted before the Court by the prosecution, on the basis of

investigation, has to be considered for ascertaining as to whether a *prima facie* case is made out against the accused.

15. However, the Hon'ble Apex Court in *Nitya Dharmananda (supra)* has held that if some material of 'sterling quality' is withheld by the prosecution, the same can be summoned or relied upon by the Court. The relevant observations are as under:

“8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge.”

16. Earlier, in case of *Ajay Kumar Parmar v. State of Rajasthan (2012) 12 SCC 406*, the Hon'ble Supreme Court had approved the permissibility to consider defence of accused only in rarest of rare cases, if such material demolishes the whole case of prosecution. These observations are reproduced as under:

“...at the time of framing the charge, the only documents which are required to be considered are the documents submitted by the investigating agency alongwith the charge-sheet. Any document which the accused want to rely upon cannot be read as evidence. If such evidence is to be considered, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. The provision about hearing the submissions of the accused as postulated by Section 227 means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted

therewith and nothing more. Even if, in a rare case it is permissible to consider the defence evidence, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted, the instant case does not fall in that category...”

17. Having taken note of the aforesaid judicial precedents, and having gone through the records of the case, this Court finds merit in the contention of learned APP for the State that learned ASJ erred in allowing the application filed by accused persons and taking on record the previous FIRs registered at their behest against the husband of complainant in present case, and then subsequently discharging the accused persons placing heavy reliance upon the said material, for the reasons stated in succeeding paragraphs.

17.1. *Firstly*, it is no more *res integra* that at the stage of framing of charge, the Court is not authorized to undertake an extensive analysis of the evidence or engage in a wide-ranging investigation of the merits of the case, and a mini-trial or an in-depth appreciation of evidence and roving inquiry into the pros and cons of the case is not permitted [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].

17.2. *Secondly*, as also discussed in preceding paragraphs, the accused

is not permitted to rely upon any material by way of defence and no provision in Cr.P.C. gives any right to the accused to produce any

documents at the stage of framing of charge [See *Debundra Nath Padhi (supra)*; *SMS Pharmaceuticals v. Neeta Bhalla (2005) 8 SCC 89*; *Bharat Parikh v. CBI 2008 10 SCC 109*; *M.E. Shivalingamurthy (supra)*].

17.3. *Thirdly*, even considering the decisions of Hon'ble Apex Court as reproduced in para 15 and 16 above, the defence of accused can only be considered, in rarest of the rare case, and if the same is of 'sterling quality', capable of establishing the whole version of prosecution to be absurd, preposterous or concocted.

17.4. *Fourthly*, as far as law on cross-FIR is concerned, it has been expressly held by the Hon'ble Apex Court that each case has to be decided on its own merits and the evidence collected in one case cannot be used or relied upon in the another case. Reliance in this regard can be placed upon decision of *A.T. Mydeen v. The Assistant Commissioner 2021 SCC OnLine SC 1017*, whereby it has been held as under:

“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.”

17.5. *Fifthly*, the FIR in the case at hand was registered in respect of an incident dated 09.05.2014, whereas an FIR bearing no. 669/14, for an incident dated 08.05.2014 registered at P.S. Madhu Vihar was taken on record by learned ASJ and relied upon to discharge the accused, which was not even a cross-FIR, rather an FIR lodged previously at the behest of the accused persons. In the impugned order, learned ASJ, at the stage of framing of charge, had primarily observed that since this previous FIR and also an earlier FIR of the year 2013 were lodged at the behest of the accused in present case against the husband of complainant, the complainant had lodged the present complaint culminating into FIR No. 764/2014 at P.S. Madhu Vihar only with a view to pressurize the accused i.e. the complainant in previous FIRs.

18. In the considered opinion of this Court, in view of the decisions of Hon'ble Apex Court on the issue of framing of charge as well as on right of accused to produce his or her defence at this stage, the learned ASJ committed an error in allowing the application filed by the accused persons/respondents and taking on record the previous FIRs filed by the accused persons against the husband of complainant. The documents taken on record *vide* order dated 25.09.2018 cannot be held to be of 'sterling quality' and of nature to prove that the case of prosecution was entirely absurd and concocted, in view of the observations made hereinabove. Further, reliance placed on these FIRs and consequent observations that present case was filed with a view solely to pressurize the accused and no case

was made out against the accused persons was also bad in law in view of the settled law on framing of charge.

19. Thus, in view of the foregoing discussion, the impugned orders dated 25.09.2018 and 17.11.2018 passed in Sessions Case No. 412/2017 by learned ASJ are set aside.

20. The matter is remanded back to the concerned Trial Court for passing an order on charge afresh, in view of the material placed on record by the prosecution and as per the settled principles of framing of charge.

21. Accordingly, the present petitions, along with pending applications if any, are disposed of in above terms.

22. A copy of this judgment be forwarded by the Registry to learned Trial Court for information and compliance.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 20, 2023/kss

Corrected and uploaded on: 26.04.2023