

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 186 OF 2024

Sandeep Vijay Chauhan and Ors. ...Applicants

vs.

The State of Maharashtra ...Respondent

Mr.Deodatta Lad:-	Advocate for Applicants.
Mr.V.N.Sagare:-	APP for Respondent – State.

CORAM : S. M. MODAK, J.

DATE : 8th MAY 2024

P. C. :-

1. On 23rd April 2024, I have heard the learned Advocate Shri. Lad for the Applicants who are 4 Accused persons in the charge-sheet filed by the Kurar Police Station. Several submissions were made about the involvement of the Accused Rahul Sahu, that is why certain directions were given to the learned APP to seek instructions on this aspect.
2. Today, learned APP pointed out to me Page No.42 from the parade panchnama wherein the First-Informant Harsh has identified

Rahul Sahu. Learned Advocate Shri.Lad submitted that inadvertently, he made this submission but in fact, the Applicant Subojit Mukul Das was not identified by the witness Rahul Dorai.

3. In support of his contention, he relied upon one more judgment in case of *Vishnu Kumar Shukla and Anr. v/s. The State of Uttar Pradesh & Anr.*¹.

4. The Court of Additional Sessions Judge – Borivali Division refused to discharge all these Applicants as per the order dated 18th December 2023, that is why, present Revision.

5. The sum and substance of the submissions made by Mr.Lad is as follows:-

- (a) The ingredients of Section 397 of the Indian Penal Code, 1860 (“IPC”) are not satisfied because no weapon was used.
- (b) For robbery, there has to be a theft / extortion and it is not there and that is why, Section 394 of the IPC is wrongly invoked.
- (c) The robbed chain is not recovered.
- (d) The parade is conducted belatedly. All these contentions were rejected by the trial Court.
- (e) The judgments cited by him were not discussed in the

¹ Criminal Appeal No. 3618 of 2023 : November 28th, 2023 : Supreme Court of India

impugned order.

Whereas, all these contentions cannot be gone into while deciding the discharge Application is the submission advance by learned A.P.P.

6. The Court has only to see a *prima facie* case and if viewed from that angle, there are sufficient materials to frame a charge, he supported the order.

7. The judgments relied upon by Mr.Lad are as follows:-

(a) In case of ***Vishnu Kumar Shukla*** (supra),

the Court of Chief Judicial Magistrate refused to discharge the Accused whereas the High Court of Allahabad confirmed the said order. The provisions relating to discharge including a summons case, in warrant case and sessions case are discussed in Para No.15. After assessing the materials, the Hon'ble Supreme Court discharged all the Accused persons. Rather than the conclusion arrived at, what is the ratio is the principles laid down about assessing the materials at the time of framing of charge. I would deal with them later on.

(b) ***Rajesh Govind Jagesha v/s. State of Maharashtra***²

wherein, the necessity of conducting a parade was reiterated. If the parade is not conducted, it will be fatal to

² 2000 ALL MR (Cri) 258

the Prosecution.

(c) ***Suresh @ Bala Shankar Kirve v/s. State of Maharashtra***³

The High Court has discharged the Accused. None of the 4 witnesses have identified the Accused in the parade and there was no recovery. It was the case of robbery. On this background, the Accused were discharged.

(d) ***Ganesan v/s. State***⁴

My attention is invited to the observations in Para No.12.7 (Page No.122). It is true that Section 397 of the IPC is not a new offence but it is aggravated form of dacoity under Section 395 of the IPC. The offender who used deadly weapon is held responsible as per Section 397 of the IPC. Different terminologies are used as “uses” deadly weapon in Section 397 and “offender” is armed with deadly weapon in Section 398 of the IPC.

8. If we consider all above observations, the following principles emerges:-

- (a) At the time of dealing with discharge Application, the Court has only to see whether there is a *prima facie* case for framing of charge.
- (b) Detailed analysis cannot be done, for example, whether particular material corroborates with other material.
- (c) Even the probative value of the material, that is to say,

³ 2003 ALL MR (Cri) 232

⁴ Criminal Appeal No. 903 of 2021 :

whether it lead to proving of an offence cannot be gone into. As per Section 227 of the Code, the Court is justified in discharging the Accused if there is no sufficient ground to proceed. It is true that these are the materials collected during investigation, if proved during the trial, will lead to a conclusion of the guilt or not cannot be inquired into by the trial Court at the time of framing of charge. The Court has to presume that the materials collected are true and *bonafide*.

9. With these principles in mind, I have assessed the materials.

Following are the facts:-

- (a) The FIR is lodged by one Harsh Anil Poddar on 12th March 2014 with Kurar Police Station. The offences are under Sections 394, 397, 504 read with 34 of IPC. He was accompanied by his friend Rahul Dorai. The incident took place at about 20.30 hours. Two unknown persons under the influence of liquor were noticed by the First-Informant. There were few exchange of words. They have called one of their friends. After that, all of them beaten him with fist and blows and there was a nasal bone fracture. His chain was snatched.
- (b) His supplementary statement was recorded on 13th March 2014 wherein he has stated that apart from the 3 persons, there was one more person.

- (c) The identification parade panchnama was conducted on 17th April 2014 in Thane Central Prison. It means, it was conducted one month from the date of incident. Though not by both the witnesses, but all the Applicants were identified in the parade.
- (d) There are statements of the persons from the vicinity who have also witnessed the incident. The medical certificate issued by Sai Kripa Hospital is on Page No.53 dated 13th March 2014. It mentions about fracture of nasal bone. Finally Report Form is on Page No.54.
- (d) There are certain previous offences registered which are described on Page No.61. They are bodily and dacoity offences.

10. It is true that for proving an offence, different kind of materials collected, either it may be in the form of eye witness or it may be in the form of corroborating materials in the form of recovery of chain or weapon. Admittedly, the Prosecution does not say that chain is recovered. What will be the effect of non recovery of chain can only be considered by the trial Court.

11. For the offence under Section 394 of the IPC, there should be hurt caused in the process of committing robbery. Robbery is defined in Section 390 of the IPC. Either theft can be a robbery or extortion

can be a robbery. When a person moves some property without the consent of another person, it is a theft. Whereas, in case of extortion, the Accused threatens a person to part away property, then it amounts to extortion. The element of '*threat*' makes difference.

12. In case before us, there are allegations that chain was snatched and earlier to that, the robbers have assaulted the First-Informant with fist and blows. These allegations are sufficient at this stage to infer that the offence under Section 394 of the IPC is made out. If unknown persons are beating someone at odd hours of night, certainly there can be an offence under Section 394 of the IPC.

13. Now, the robbery can be an offence under Section 397 or dacoity an offence under Section 397. What are the prerequisites:-

(a) Either offender used deadly weapon or caused grievous hurt to any person.

In this case, there is a fracture of nasal bone. Certainly it falls within the purview of Section 320 of the IPC. Possessing deadly weapon is not only the requirement for invoking Section 397 of the IPC. Here, the robbers who were 4 in numbers were there and grievous hurt is caused. That is why, Section 397 of the IPC is invoked. Amongst these 4 persons, who have caused grievous hut, it will be subject matter of

appreciation.

14. The delay, if any, in conducting the parade cannot be considered at this stage because it deals with appreciation of evidence. For all these reasons, I do not find any merit in this Revision. It is true that learned Additional Sessions Judge ought to have discussed the judgments cited. Even, the learned Additional Sessions Judge has not considered what are the materials placed by the Prosecution. There are general comments that the material is there. In fact, it should be avoided. Merely because material is referred, it does not mean that the Court is conducting in depth enquiry which is not permissible. There is no merit in the Revision and hence, it is dismissed.

15. These are only the *prima facie* observations which are made for deciding the Revision. When the evidence will be adduced, the trial Court to appreciate that evidence independently without being influenced by these observations.

16. In view of that, Revision Application is disposed of.

[S. M. MODAK, J.]