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

+ **CRL.REV.P. 143/2024**

STATE GNCT OF DELHI

..... Petitioner

Through: Ms. Shubhi Gupta, APP for the State
with SI Sandeep Kumar, PS: Bawana.

versus

SHAILENDER & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **06.02.2024**

CRL.M.A. 2892/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.A. 2891/2024 (for condonation of delay of 689 days)

3. This application has been preferred on behalf of the State under Section 5 of Limitation Act read with Section 482 Cr.P.C. seeking condonation of delay of 689 days in filing the present petition.
4. It is stated in the application that the period of 90 days for filing the revision petition against the impugned order dated 16.12.2021 expired on 16.03.2022 but the same could not be filed within the limitation period since the certified copy of the order was made available only on 23.12.2021 and after receiving the copy, the same was sent to the office of Directorate of Prosecution for further action. During this period, onset of Pandemic COVID-19 had led to the Supreme Court extending the period of



limitations, wherever they were expiring after 15.03.2020 in '**Re: Cognizance for Extension of Limitation, Suo Moto Writ Petition (Civil) No.3 of 2020**'. It is further stated that petition could not be filed as the files were moving in different Departments and at some stage the relevant files were mixed up accidentally with some other files and it took time to trace out the correct files. It is urged that the Supreme Court has time and again held that a case should not be thrown out on limitation if there are merits and sometimes adoption of strict standards leads to miscarriage of public justice and therefore, liberal view be taken by the Court and delay be condoned.

5. For the reasons stated in the application and considering that large part of the delay was on account of Pandemic COVID-19, Petitioner has made out sufficient cause for condonation of delay.

6. Application is accordingly allowed and delay of 689 days in filing the petition is condoned.

7. Application stands disposed of.

CRL.REV.P. 143/2024

8. This Revision Petition has been preferred under Section 397 Cr.P.C. read with Section 401 Cr.P.C. on behalf of the State, assailing the impugned order dated 16.12.2021, passed by learned Additional Sessions Judge-04 (North), Rohini Courts, Delhi, to the extent the Trial Court has taken a view that offence under Sections 307/34 IPC is not made out against the Accused persons in case FIR No.268/2017 under Sections 307/323/341/452/34 IPC registered at PS: Bawana, in case titled ***State v. Shailender & Ors.***

9. Facts to the extent necessary are that on 30.06.2017, DD No. 5PP was recorded at PS: Bawana on a quarrel at Harevli near the dispensary and accordingly, ASI Ramesh Chand alongwith HC Naresh and Const. Amit



reached the spot, where they came to know that injured persons had been taken to MVH by PCR Van. The quarrel was between two families residing close to each other as neighbours and it was revealed that Shailender @ Shalli had quarrelled with Praveen and caused injuries and firing was done from Shailender's house. No empty shell was, however, found at the spot. Police team thereafter reached the hospital and collected MLCs of Praveen, Sachin, Preeti and Krishna, who were undergoing treatment and the MLCs reflected history of physical assault. As per MLCs of Sachin and Preeti, the nature of injuries was opined to be simple/blunt, whereas on the MLCs of Praveen and Krishna against the columns of nature of injury, 'OR' was mentioned. Murti Devi, Shailender and Nitin were also admitted in hospital, after some time. Murti Devi did not suffer any injury whereas Shailender suffered an injury on his foot. Nitin had admitted himself in the hospital. All family members of Praveen sustained injuries and were taken to Hospital by the PCR Van.

10. Statement of the Complainant/Praveen @ Meenu was recorded, wherein he alleged that there were disputes between his family and members of Jai Bhagwan's family with regard to parking of their vehicles outside the Complainant's house. Praveen's family had placed bricks in front of the house for the purpose of construction but still Jai Bhagwan's family continued to park their vehicle. It was alleged that on 29.06.2017, Accused Shailender threw the bricks but after some altercation, matter was settled and no police complaint was made. On 30.06.2017 at about 6:40 PM, when Praveen was outside his house and leaving for his work, Accused Shailender and his nephew co-accused Nitin Kumar obstructed his way and threatened that they would throw away the bricks and teach him how to do a job and



later both hit him with legs and fist blows. When Praveen's wife Preeti came to save him, she was also beaten but she somehow saved herself and ran inside the house. In the meantime, other family members of Shailender i.e., accused Shri Bhagwan, his sons Satpal and Deepak as well as Nitin son of Shailender, came with *dandas*, *fawra* and *lathi* and forcefully entered his house and started beating his family members. Accused Murti, Rekha and Reeta had also forcefully entered the house and beaten his family members with legs and fist blows, but when neighbours intervened, they all fled away. Ladies in the family of the Accused persons also pelted bricks on Praveen's family members.

11. On the basis of statement of Praveen, spot inspection and the MLCs, offences under Sections 323/341/452/34 IPC were found to be committed and FIR was registered. Further investigation was conducted in which site plan was prepared, crime team was called and spot was photographed. Exhibits were lifted and statements of Ram Kumar, Krishna Devi, Preeti and Sachin were recorded under Section 161 Cr.P.C., who stated that family members of Shri Bhagwan had beaten them with *dandas* and *fawra* after entering their house. No eye-witness was present in the hospital. Accused Shailender was arrested whereas others absconded. On 01.07.2017, while searching for other accused persons, Jagdish S/o Sheesh Ram met ASI Ramesh Chand and stated that on the day of the alleged incident, he came to know that family of Shri Bhagwan had beaten the family members of Ram Kumar after entering into their house and they were injured. He further stated that he heard the sound of fire from the house of Shri Bhagwan. Sachin informed that one empty shell was found on the roof and his supplementary statement was recorded on 01.07.2017 in this regard. Section



336 IPC and Section 25 Arms Act were added. During further investigation, Praveen and his brother Sachin produced photographs and CD of the incident of the quarrel. MLC of injured Praveen was collected wherein injury was opined as grievous and Section 325 IPC was added. Supplementary statements of Krishna and Sachin were recorded under Section 161 Cr.P.C. on 12.10.2017, wherein they stated that accused Nitin had fired from his roof aiming towards Sachin and thus Section 307 IPC was added. On completion of investigation, Charge Sheet was filed under Sections 323/325/341/307/452/34 IPC and Section 25 Arms Act.

12. Arguments on point of charge were heard on 08.12.2021. Accused persons conceded on the point of charge qua offences under Sections 323/325/341/452/34 IPC and Section 25 Arms Act and contested with respect to offence under Section 307 IPC. By the impugned order dated 16.12.2021, learned Sessions Court held that *prima facie* case for offence under Section 307/34 IPC was not made out against the Accused persons and remanded the matter back to the concerned Magistrate for trial on the remaining offences.

13. Perusal of the impugned order shows that learned Sessions Court has arrived at the aforesaid conclusion after detailed examination of the material on record, placed by the prosecution. Court has examined the statements of Ram Kumar, Krishna Devi, Preeti and Sachin recorded under Section 161 Cr.P.C. on 30.06.2017, wherein they stated that Accused persons gave them beatings with *lathi*, *dandas*, *fawra*, fists and legs but never stated that any firing incident took place. Court noted that Jagdish claimed that Nitin had fired in the air from his roof and ASI Krishan Pal stated that he had heard the sound of fire from the house of Shri Bhagwan, while Sachin in his



supplementary statement stated that he came to know that Nitin had fired in air after the beating incident and improving on the said version, Krishna and Sachin later in their supplementary statements, recorded after a long gap, claimed that Nitin fired from the roof aiming towards Sachin and considering the long gap, an effort to convert the case into Section 307 IPC cannot be ruled out. Sachin in his supplementary statement dated 01.07.2017 claimed that he had heard that Nitin had fired in the air, which was hearsay in nature, but later in the second supplementary statement dated 12.10.2017, he changed his stand to state that Nitin had fired from his roof aiming towards him, which was contradictory and the purpose was to improvise on the earlier stand. No independent witness had given a statement that Nitin had a gun in his hand and the alleged weapon of offence was never recovered. Recovery of empty shell, according to the Sessions Court, was mysterious as neither the Police nor the crime team recovered the same and it was the Complainant who had handed over the empty shell the next day.

14. Ms. Shubhi Gupta, learned APP appearing on behalf of the State submits that the impugned order suffers from various illegalities and cannot be sustained in law. Learned Sessions Court has failed to appreciate that both Krishna Devi and her son Sachin in their supplementary statements recorded on 12.10.2017 had stated that Nitin had fired pointing towards Sachin. In light of the statements of eye-witnesses, charge under Section 307 IPC was made out.

15. It is argued that learned Trial Court has overlooked the observations of the Supreme Court in *Sonu Gupta v. Deepak Gupta & Ors., (2015) 3 SCC 424*, that at the stage of framing of charge, an individual Accused may



seek discharge, if he or she can show that materials are absolutely insufficient for framing of the charge. When there is material raising strong suspicion against the Accused, Court will be justified in rejecting a prayer for discharge and granting an opportunity to the prosecution to bring on record the entire evidence as per law. Trial Court is only required to satisfy itself from the material on record if a *prima facie* case is made out against the accused to put him to trial and not if the material is sufficient for his conviction or acquittal.

16. Heard learned APP for the State and examined the contentions raised as well as the impugned order and the documents on record.

17. Before according consideration to the submissions made by the State in the Revision Petition and as articulated by the learned APP, it would be first necessary and relevant to examine the scope of revisional jurisdiction, particularly, while dealing with an order framing a charge. In ***Amit Kapoor v. Ramesh Chander and Another, (2012) 9 SCC 460***, the Supreme Court observed as under:-

“10. Aggrieved by the judgment of the High Court, in the present appeal, the appellant impugns the same primarily on the ground that the High Court had exceeded and not appropriately exercised its jurisdiction under Sections 397 and 482 of the Code in quashing the charge framed against the respondent under Section 306 IPC.

11. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code.

12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in



accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

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19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] : (SCC pp. 41-42, para 4)

“4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If ‘the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing’, as enjoined by Section 227. If, on the other hand, ‘the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused’, as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his



conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”

18. It is necessary at this stage to look into the well-settled parameters within the contours of which Court is required to consider the prosecution case at the stage of framing of charge. It has been consistently held in several judgments that at the stage of framing of charge, Court is required to only evaluate the material and documents which have been placed on record by the prosecution and examine whether the ingredients constituting an offence are made out and for this limited purpose, Court can sift evidence. The Supreme Court in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijaya & Ors., (1990) 4 SCC 76**, delineated the parameters as follows:-



“6. The next question is what is the scope and ambit of the ‘consideration’ by the trial court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh [(1977) 4 SCC 39: 1977 SCC (Cri) 533: (1978) 1 SCR 257] this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609: (1979) 2 SCR 229] this Court after considering the scope of Section 227 observed that the words ‘no sufficient ground for proceeding against the accused’ clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence. After considering the case law on the subject, this Court deduced as under: (SCC p. 9, para 10)

“(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 adduced 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 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 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.”

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From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the 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.”

19. In ***State of Maharashtra & Others v. Som Nath Thapa and Others***, (1996) 4 SCC 659, the Supreme Court observed as under:-

“32. if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”



20. In ***State of M.P. v. S.B. Johari & Others, (2000) 2 SCC 57***, the Supreme Court propounded the test for scrutinizing material produced by the prosecution on record for the purpose of framing of the charge and relevant observations are as under:-

“4. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial.”

21. It would be useful at this stage to allude to the observations of the Supreme Court in ***State of Bihar v. Ramesh Singh, (1977) 4 SCC 39***, where the scope of Section 227 of Cr.P.C. was considered and the Supreme Court held that at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that Accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the Accused. The Supreme Court also observed that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for satisfaction of the Trial Judge in order to frame a charge against the Accused. Relevant passage from the judgment is as under:-

“4..... Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say



that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.....”

22. In a subsequent decision in ***Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4***, the Supreme Court enunciated the following principles:-

“10.

(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 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 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.”



23. In this context, it would be instructive to refer to another judgment of the Supreme Court in ***Rajiv Thapar and Others v. Madan Lal Kapoor, (2013) 3 SCC 330***, where the Supreme Court observed as under:-

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

24. Another connected and relevant factor, which is particularly relevant in this case and is well-settled, is that while considering an application for discharge, 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 that stage, he is not to see



whether the trial will end in conviction or acquittal and the Trial Court will be duty bound to exercise this duty to determine whether a case for trial is made out. These are the observations of the Supreme Court in ***P. Vijayan v. State of Kerala, (2010) 2 SCC 398*** and relevant passage is as under:-

“10. ... 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. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

25. With these settled principles and observations of the Supreme Court in the backdrop, I would now deal with the present case and for this, it would be pertinent to examine the material placed before the Trial Court by the prosecution. It is undisputed that the trigger of the FIR was a quarrel between Praveen and his neighbour Shailender and the latter’s nephew Nitin over throwing of bricks on 30.06.2017, which were lying outside the house of Praveen and was also connected to an earlier parking issue. As per the prosecution case, Praveen, who was the Complainant, alleged that on 30.06.2017, after the quarrel started, members of both families got involved and family members of Shailender entered Praveen’s house and started



beating with *dandas*, *fawra* and *lathi*, in addition to fist blows and beating with their legs. There was no mention of any gunshot fire by Nitin. When Police was called on 100 number by Praveen and FIR was registered, no eye-witness was found at the spot or even later in the hospital. Site plan was prepared, crime team was called and the spot was photographed. Exhibits were lifted and statements of Ram Kumar, Krishna Devi, Sachin and Preeti were recorded under Section 161 Cr.P.C., who only stated that family of Shri Bhagwan had beaten them with *dandas* and *fawra*. Again, there was no mention of any gunshot fire and admittedly, neither any weapon nor any empty shell was recovered by the crime team or the Police from the spot. On 01.07.2017, while Police was searching the other Accused persons, since Shailender had been arrested, one Jagdish met ASI Ramesh Chand and stated in his statement under Section 161 Cr.P.C. that Nitin had fired in air from his roof. ASI Krishan Pal stated in his statement under Section 161 Cr.P.C. dated 01.07.2017 that he heard the sound of fire from the house of Shri Bhagwan. Sachin in his supplementary statement dated 01.07.2017 claimed that he came to know that Nitin had fired in air after the beating incident but subsequently, in supplementary statements recorded after a gap of 3 months on 12.10.2017, Krishna Devi and Sachin claimed that Nitin had fired from his roof aiming towards Sachin. Therefore, seen holistically, two contradictory statements of Nitin were on record before the Trial Court separated by a period of 3 months, one, in which he stated that he came to know that Nitin had fired in air and second, in which he stated that Nitin had fired aiming at him, which meant that he was witness to the incident. Both the statements, one hearsay and the other allegedly as an eye-witness, cannot gel and therefore, as rightly observed by the Trial Court, the second



supplementary statement made after a gap of 3 months was only to improvise on the earlier statement and renders the same suspect and unsafe for reliance. The other witness ASI Krishan Pal had only heard the sound of fire and Jagdish claimed that Nitin fired in air. No independent witness has given the statement that Nitin had gun in his hand and fired with an intent to cause injury to anyone in the family of Praveen. Weapon of the alleged offence has not been recovered till date and so far as recovery of empty shell is concerned, the Trial Court notes that the same is mysterious as neither the Police officials nor the crime team recovered the same on the date of the incident and strangely, it was Sachin who had handed over the same on the next day i.e. 01.07.2017. In similar circumstances, this Court in ***Sunil Bansal v. State of Delhi, 2007 (2) JCC 1415*** and ***Prashant Bhaskar v. State (Govt. of NCT of Delhi), CRL. REV. PET. No.385/2009***, decided on 22.09.2009, held that while undertaking the exercise of sifting of the materials and keeping in mind the existence of two contradictory statements, Trial Court will be justified in not framing the charge as the statements are not only contradictory but unsafe as well. In ***Bhagwanti Devi v. State, 2002 (1) JCC 127***, no allegations were initially made by the Petitioner with regard to dowry demands or cruelty in the statements before the SDM conducting inquest proceedings but in subsequent statements recorded by the Police under Section 167 Cr.P.C., vague allegations were made. The Court held that subsequent statement may give rise to suspicion but not to grave suspicion and hence, no charge should be framed against the Petitioner based on these statements. The observations of the Supreme Court in ***P. Vijayan (supra)***, are apt in the present case that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave



suspicion, Trial Judge will be empowered to discharge the Accused and at this stage, is not to see whether the trial will end in conviction or acquittal. These principles have been correctly applied by the Trial Court in the impugned order to hold that no charge with respect to offence under Section 307 IPC and Section 25 of Arms Act was made out against the Accused persons and rightly set the case for trial by the Magistrate Court for offences under Sections 323/325/452/34 IPC. Analysing the ingredients of Section 307 IPC, the Supreme Court in ***Ratan Singh v. State of M.P. and Ors., (2009) 12 SCC 585***, held that the ingredients of Section 307 IPC require that the act complained of, irrespective of its result, was done with intention or knowledge and under such circumstances as mentioned in the Section. An attempt in order to be criminal need not be the penultimate act and it is sufficient in law if there is an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the Accused and its result, if any. In ***Santosh Kumar Yadav v. State, 2012 SCC OnLine Del 3678***, this Court observed as under:-

“10. What can be deduced from the aforesaid provision is that an attempt to make a crime is an act done with the intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The offender may do an act towards the commission of the offence of murder, but may involuntarily fail or be intercepted or prevented from consummating the crime. The nature of the injury caused may give some assistance in coming to a finding as to the intention of the accused, but such intention may also be deduced from other circumstance and may be ascertained in some cases without reference to the actual injuries. If a person knows that a certain result would ensue from an act, he would be deemed to intend such result by his act. What they court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in Section 307 IPC. An attempt, in Order to be criminal, need not be the penultimate act. It is sufficient in law if there is present an intent



coupled with some overt act in execution thereof. The burden to prove always lies on the prosecution. The intention of the assailant may be gathered from the nature of the weapon used and the parts of the body where the injuries, were inflicted. Causing hurt is merely an aggravating circumstance and it cannot reasonably be assumed that unless an injury is sufficient in the ordinary course of nature to cause death inflicted on the victim, the intention contemplated by this provision cannot be presumed. The intention precedes the act and is to be established independently of the act and not merely gathered from the consequences that ensued. A person is criminally responsible for an attempt to commit murder when with the intention and knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence and when the completion of the offence is prevented by some cause independent of his volition.

11. In Om Parkash v. The State of Punjab, AIR 1961 SC 1782, Supreme Court held that in cases of attempt to commit murder by firearm, the act amounting to an attempt to commit murder is bound to be the only last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence and once he fires and something happens to prevent the shot taking effect, the offence under Section 307 is made out. In State of Maharashtra v. Kashirao, (2003) 10 SCC 434 : AIR 2003 SC 3901, Supreme Court held that for the application of Section 307 IPC it is not necessary that the injury capable of causing death should have been actually inflicted. In Vasudeo Balwant Gogte v. Emperor, AIR 1932 Bombay 279, it has been held thus, "What Section 307 IPC really means is that the accused must do an act with such a guilty intention and knowledge and in that circumstances but for some intervening fact the act would have amounted to murder in the normal course of events". In Shri Madan Gopal @ Madan Bhaiya v. State Govt., of NCT of Delhi, MANU/DE/0086/2008, a Single judge of this Court has held thus, "to justify conviction under Section 307 IPC since an attempt in order to be criminal need not be penultimate act foreboding death. It is sufficient in law if there is present intent coupled with some overt act in execution thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation".

26. Therefore, the prosecution, even at the stage of framing of charge, is *prima facie* required to show that there was an intent coupled with an overt act. In the present case, as the Trial Court notices, there is no independent witness, who has seen Nitin with a gun, save and except, the versions of



Jagdish, who stated that he heard a sound of fire and two contradictory statements of Nitin, as aforementioned and therefore, even on a *prima facie* level, ingredients constituting an offence under Section 307 IPC were not made out and there is no material against the Accused persons to connect them to the offence alleged. No legal infirmity or error can be found in the impugned order, warranting interference in exercise of revisional jurisdiction of this Court.

27. For all the aforesaid reasons, petition is dismissed, being devoid of merit.

JYOTI SINGH, J

FEBRUARY 06, 2024/shivam/DU/kks