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

% *Date of Decision: 22nd July, 2024*

\+ **CRL.REV.P. 92/2023**

SUNIL KUMAR .....Petitioner

Through: Mr. Ashish Upadhayay, Mr. Pradeep Kumar Mishra, Ms. Chanchal Kumari, Mr. Keshav Meena & Ms. Chandani, Advs.

versus

STATE AND OTHERS .....Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State along with Mr. Karan Khurana, Mr. Hari Shankar Sharma, Mr. Ashutosh Kumar Singh & Mr. Deepak Grover, Advs.
SI Babu Lal, PS Naraina.
Mr. Suresh Bharti, Mr. Shrikant & Mr. Harsh, Advs. for R-2 to R-4.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. ***(Oral)***

1. The present petition challenges the order dated 02.11.2022 passed by the learned ASJ-07, Patiala House Courts, New Delhi, pursuant to which the order dated 30.03.2022 passed by the learned Metropolitan Magistrate-08 (‘**MM**’) has been set aside to the extent of charges framed against Respondent Nos.2 to 4.

Brief Facts:

2. The seminal facts relevant for the purpose of the present petition are as follows:

2.1. FIR No. 131/2012 dated 23.08.2012 registered at Police Station Naraina for offences under Sections 420/468/471/34 of the IPC was lodged at the behest of the complainant/petitioner. The complainant was engaged in a business of selling iron and steel material in the name of M/s. S N C Sales Corporation. It is alleged that one person, namely, Vikas Chauhan/accused was also running a business of selling of iron material in the name of 'Vikas Traders.' It is alleged that upon the assurance of Vikas's uncle - Sunil Verma/accused, the complainant started supplying goods to Vikas on credit.

2.2. It is alleged that in the period between 01.04.2011 to 24.04.2011, the complainant had supplied goods worth ₹44 lakh to Vikas on credit, against which Vikas had issued two signed blank cheques as a guarantee for the goods supplied and had asked the complainant to encash the cheque in the event, he failed to make payment for the goods supplied. It is the complainant's case that despite the said assurance Vikas failed to make payment for the goods owing to which the complainant went to the bank to encash the aforesaid cheques. It is alleged that when the complainant attempted to encash the cheques, he discovered that the bank account had already been closed and the proprietorship firm 'Vikas Traders' had ceased operations.

2.3. It is alleged that when the complainant went to the police station to file a complaint against Vikas, he discovered that Vikas had submitted a copy of a compromise deed to the police. It is alleged that no such compromise had occurred, and he had not received any money. Additionally, the complainant alleged that his signature on the compromise deed is forged and that the deed, purportedly prepared by Vikas and Sunil Verma, is fabricated. Respondent Nos. 2 to 4 have also allegedly signed the forged sale deed and settled with the complainant. After completion of the investigation, the chargesheet was filed against the accused persons under Sections 120-B/468/471 of the IPC.

3. The learned MM *vide* order dated 30.03.2022 framed charges against the accused persons including Respondent Nos. 2-4 under Sections 120-B/468/471 of the IPC, and observed as under:

> *"Arguments heard on behalf of the Ld. Counsel for the accused and Ld. APP for the State.*
> *Prima facie it seems that one compromise deed has been placed on record with the charge sheet which bears the signature of* ***Naresh Kumar Gupta, Anil Kumar Aggarwal*** *and* ***Smt. Madhu Bala****. As per the charge-sheet the compromise deed is a fake deed, therefore, prima facie offene u/s 120-B/468/471 IPC has been made out against these three accused persons."*

4. The learned ASJ, by impugned order, in revision petition preferred by Respondent Nos.2 to 4, set aside the order passed by the learned MM and held as under:

> *"9.The revisionists have been charged with an offence punishable u/s 120B/468/471 IPC.*
> *Section 468 deals with the forgery for the purpose of cheating. Section 468 IPC is applicable to a person who has committed the forgery with an intention that the document or electronic record forged for the purpose of cheating.*
> *There is no evidence on record that the revisionists had forged the compromise deed or the compromise deed is containing their signatures. Neither their specimen signatures were collected and were sent to FSL nor there is any witness who has stated that the revisionists have signed the alleged compromise deed in his presence.*
> *10.Section 471 IPC applies when a person fraudulently or dishonestly uses a genuine document or electronic record, which he knows or has reason to believe to be a forged document. Therefore, what is important for the purpose of invoking Section 471 IPC is that the forged document is used as genuine. Section 471 IPC can be invoked only against the user of the forged document. As per the complainant, it was accused Vikas Chauhan who has used the compromise deed and has produced the same before the Police. There are no allegations that the revisionists had used the forged document in any manner.*
> *11.Therefore, neither any allegation has been leveled by the complainant as against the revisionists nor there is any evidence to show that the revisionists had handed over any cheque to the complainant. There is no evidence on record that the revisionists had signed the compromise deed or forged the signatures of the complainant. There is no evidence on record to show that the revisionists have used the compromise deed to their advantage and to cause wrongful loss to the complainant.*
> *12. In view of the above observations, the order dated 30.03.2022 as against revisionists is set aside and revisionists Naresh Kumar Gupta, Anil Kumar Aggarwal and Madhu Bala stands discharged."*

5. Aggrieved by the aforesaid order, the petitioner has preferred the present petition.

6. The learned counsel for the petitioner/complainant submits that the learned ASJ failed to consider that the original alleged compromise deed was sent to the Forensic Science

Laboratory (FSL) along with the complainant's signatures and the specimen handwriting of Vikas and Sunil Verma. The FSL opined that the complainant had not signed the said compromise deed, indicating that the complainant's signatures were forged. Additionally, the learned counsel argues that the learned ASJ overlooked the fact that the compromise deed was also signed by Respondents No. 2-4. He submits that the conclusion drawn by the learned ASJ is based on the surmises and conjectures, hence, is liable to be set aside.

7. This Court has heard the arguments addressed by the counsels for the parties, and has perused the material on record.

8. Since the petitioner has assailed the impugned order discharging Respondents No. 2-4, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the CrPC. The relevant sections are set out below:

> *"Section 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.*
> *Section 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, 1 [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."

9. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI* : (2010) 9 SCC 368**, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read 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****."*

(emphasis supplied)

10. The Hon'ble Apex in the case of ***State of Karnataka v. M.R. Hiremath*** **: (2019) 7 SCC 515** held that while considering an application for discharge, the court must assume that the material brought on record by the prosecution is true. The court must then evaluate whether the facts, taken at face value, disclose the necessary ingredients to constitute the offense. The Supreme Court emphasized that at this stage, the court should not delve into the merits of the evidence but rather determine if a prima facie case exists. The relevant paragraph is reproduced as under:

"25. *The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. 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. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529*

: (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

"29. … At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

11. In a recent decision in the case of ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.*** **: 2022 SCC OnLine SC 1057**, the Hon'ble Apex Court has explained the law on charge and held as under:

"*21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge* *before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.*

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. ***At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt****. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.*

23. Section 397 CrPC 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 or the perversity which has crept in the proceeding."

12. Thus, at the time of deciding whether the Court should either frame charges against the accused or discharge the accused, the Court is required to look into the facts and circumstances of the case and give due consideration to the materials placed on record, the investigation and the facts determined therefrom. On the basis of the aforesaid, the Court is required to ascertain if *prima facie* the essential ingredients of an offence are made out or not. The Court ought not conduct an in-depth appreciation of evidence or inquire into the pros and cons of the case since the Court is not allowed to conduct a mini-trial while passing an order on charge [Ref: ***Sajjan Kumar v. CBI*** **: (2010) 9 SCC 368;** ***Asim Shariff v. NIA*** **: (2019) 7 SCC 148**].

13. The allegations in the present case relate to the forged compromise deed produced by the accused Vikas Chauhan before the police authorities. Respondent Nos.2 to 4 are shown in the said forged compromise deed to have also signed as the beneficiary. It is sought to be contended that by taking benefit of the forged compromise deed, the accused persons have shown that the disputes in regard to the cheques in the possession of the complainant, got settled.

14. It is relevant to note that the dispute as alleged by the complainant relates to supply of material to the accused Vikas Chauhan. As noted by the learned ASJ, the complainant had alleged that the accused Vikas Chauhan gave him two blank cheques and when the complainant went to get the cheques encashed, the account was found closed. Thus, no allegation has been made in regard to any business transaction with Respondent Nos. 2 to 4. They are sought to be made as accused on account of their name and alleged signature appearing in the forged compromise deed. It is not the case of the complainant that the cheques which are referred in the forged compromise deed were issued by Respondent Nos. 2 to 4. It is apparent that no allegation has been made against the Respondent Nos.2 to 4.

15. As rightly noted by the learned ASJ, no investigation has been made in order to ascertain whether the purported signatures are that of Respondent Nos.2 to 4. Their specimen signatures were also not collected and no statement of any witness was recorded to the effect that Respondent Nos.2 to 4 have signed the said forged compromise deed.

16. Respondent Nos. 2 to 4 are sought to be charged for offences under Sections 468/471of the IPC. The same applies when a person fraudulently or dishonestly uses a forged document as genuine one for the purpose of cheating. The ingredients thereof are clearly missing as far as the allegations against Respondent Nos.2 to 4 are concerned. As per the complaint, the allegations were essentially made against the accused Vikas Chauhan, who has allegedly taken material from the complainant and had issued two blank cheques. The complaint specifically states that the accused Vikas Chauhan had produced the forged document before the police authorities. Thus, the allegation in regard to using a forged document as genuine is not made against Respondent Nos.2 to 4.

17. It is well settled that the Court, while exercising jurisdiction under Section 397 or Section 482 of the CrPC must not interfere with the order unless it is in the interest of justice and to avoid abuse of the process of court leading to injustice. The object behind Section 397 of the CrPC is to set right a patent defect or an error of jurisdiction or law or any perversity that might have crept in the proceeding. In ***Sajjan Kumar v. CBI*** (*supra*), it was observed that where two views are possible, the trial Court is empowered to discharge the accused persons and adopt the view that gives rise to mere suspicion instead of grave suspicion, and benefits the accused persons.

18. This Court while exercising power under Section 397 of the CrPC is only required to satisfy itself about the correctness of

the legality of the order passed by the inferior Court and is not to substitute the view that may be plausible.

19. In the present case, the learned ASJ has considered the totality of facts and circumstances and rightly applied his judicial mind before discharging the Respondent Nos. 2-4 of offences punishable under Sections 120-B/468/471 of the IPC in the light of absence of grave suspicion against Respondent Nos. 2-4.

20. In such circumstances, this Court is of the opinion that given the limited scope of interference under Sections 397 and 482 of the CrPC, and that the impugned order is not plagued with any inherent perversity, this Court does not find any ground to interfere with the impugned order.

21. Accordingly, the order dated 02.11.2022 passed by the learned ASJ discharging the Respondents No. 2-4 of offences punishable under Sections 120-B/468/471 of the IPC, is upheld.

22. In the view of the aforesaid, the present petition is dismissed.

AMIT MAHAJAN, J

JULY 22, 2024