



2024:DHC:6421



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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 22nd August, 2024*

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CRL.REV.P. 114/2023 & CRL.M.A. 3181/2023**GUNJAN@GIRIJA KUMARI & ORS.Petitioners**

Through: Ms. Urvashi Bhatia, Ms.
Bhavika Kaul and Mr.
Ashish Mundhare, Advs.

versus

STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State with
Insp. Arvind Kumar, PS
Kirti Nagar.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present petition is filed challenging the order dated 26.11.2022 (hereafter ‘**the impugned order**’) and order dated 30.11.2022, whereby charges have been framed against Petitioner Nos. 1 to 4, for offences under Section 506/34 of the Indian Penal Code, 1860 (**IPC**) and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**‘SC/ST Act’**) against Petitioner No.1.

2. Briefly stated, the FIR No. 42/2021 was registered on the statement of Sh. Bhim Sain wherein he alleged that the petitioners had extended threats and used abusive language against him. He further alleged that Petitioner No.1 insulted him

CRL.REV.P. 114/2023***Page 1 of 9***

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By: HARMINDER KAUR
Signing Date: 27.08.2024
11:58:14



2024:DHC:6421



by using caste-based remarks that he belonged to the SC category.

3. During the course of the investigation, caste certificate of the complainant was verified by the Sub-Divisional Magistrate, Delhi, Revenue Department, and as per the verification report, the complainant belongs to a Schedule Caste.

4. It is further the case of the prosecution that the witness, namely, Love Manchanda disclaims having heard any caste slur; and even does not confirm the identity of the person who is alleged to have made such slur. However, the second witness, namely, Chandra Prakash supports the allegation in the FIR.

5. The learned counsel for the petitioners submits that petitioners Nos.2 to 4 are themselves persons of the Scheduled Caste community. However, petitioner No.1, who is the wife of petitioner No.2, is not a member of the same caste.

6. She submits that the prosecution witnesses cited by the prosecution are childhood friends of the complainant, and therefore would not qualify as a 'member of the public' to fulfill the essential ingredient of the offence and there is no material on the basis of which charge could have been framed against petitioner No.1 under sections 3(1)(r) and 3(1)(s) of SC/ST Act.

7. The learned Additional Public Prosecutor for the State submits that according to the status report, the complicity of Petitioner No.1 is clear from the investigation that has been carried out to date, and therefore the question of impugning the order on charge is untenable.

8. I have heard the counsel for the parties and perused the

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By: HARMINDER KAUR
Signing Date: 27.08.2024
11:58:14

CRL.REV.P. 114/2023

Page 2 of 9



2024:DHC:6421



record.

9. Before delving into the facts of the present case, it is important to note that it is a settled law that the scope of interference by High Courts while exercising revisional jurisdiction against order on charge is limited and ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. In the case of ***Amit Kapoor v. Ramesh Chander* : (2012) 9 SCC 460**, the Hon'ble Supreme Court, advertent to a catena of precedents, noted that the test for quashing of charge in the exercise of revisional jurisdiction is whether the allegations, as made from the record of the case, taken at their highest, constitute the offence or not.

10. It is also trite law that the trial court, at the stage of framing of charges, is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made out against the accused persons. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI* : (2010) 9 SCC 368**, has culled out the following principles in regard to the scope of Sections 227 and 228 of the Code of Criminal Procedure, 1973 (CrPC) :

“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

CRL.REV.P. 114/2023

Page 3 of 9

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Signing Date: 27.08.2024
11:58:14



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)

11. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** : 2023 SCC OnLine SC 1294, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:-

CRL.REV.P. 114/2023

Page 4 of 9



7. *It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.*

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12. *The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.*

12. In view of the above, it is clear that this Court, at this stage, is not required to evaluate the evidence or hold a mini-trial as the same would be tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on



2024:DHC:6421



record and whether on the material placed before it, the Court could form an opinion that there is *grave suspicion* against the accused.

13. In the present case, there are allegations against the petitioners that, acting in furtherance of common intention, they hurled abuses at the complainant, his wife, and his son, and also threatened to kill him. Additionally, they allegedly threatened to falsely implicate him in a molestation case. Therefore, at this stage, there is sufficient suspicion of an offence under Section 506 of the IPC.

14. Further, specific allegations have been made against Petitioner No. 1 in the complaint. According to the prosecution, the complainant and the accused are both neighbors and relatives. It is alleged that Petitioner No. 1 frequently made caste-based remarks. On 27.01.2021, at around 7:00 PM, at 7/38 Ramesh Nagar, New Delhi, Petitioner No. 1, who is not a member of the SC/ST community, is accused of insulting the complainant using casteist language with the intent to humiliate him in public view.

15. This gives rise to a strong suspicion of her involvement in the alleged offence. At the stage of framing charges, the court is not required to meticulously assess the truthfulness, accuracy, or impact of the witnesses' statements or the evidence on record.

16. At this stage, even a strong suspicion, based on the material presented before the court, that leads to a presumptive opinion about the existence of factual elements constituting the alleged offence, may suffice to justify the framing of charges.

17. A bare perusal of the FIR unequivocally indicates that



2024:DHC:6421



Petitioner No.1 is alleged to have made caste-based remarks towards the complainant and the other petitioners and in furtherance of their common intention are alleged to have criminally intimidated the complainant by threatening to falsely implicate and kill him. The relevant portion of the complaint as stated in the FIR is reproduced below :

“...And Gujan who is of Brahmin caste. She calls me and my wife and child Harijan, Chuda Chamar, low caste people, kutta, Gandhi Nali ke Kide. Because of their misbehavior, we gave our son a separate house on rent. All these people threaten him to implicate him in any case of molestation in any wrong way. And also threaten to kill. Even when someone comes to meet me, even in front of him, sometimes Gujan comes down and sometimes abuses me from the floor. Chamar’s friends have come, Chude’s friends have come, Namrad’s friends have come, Gandhi nali ke kide’s friends have come. Sir, today when my friends came to meet me, Gunjan used all these caste-indicative words in front of them too. My friend Chandra Prakash alias Chini has also abused me many times. Who comes to meet me. And in front of him too, Gunjan, Rachna used caste-indicative words. also abused many times in front of my friend Babi: And Gunjan has called me Chuda, Chamar, low caste, kutta Harijan, dirty drain worm many times in front of him...”

18. It is further pertinent to consider that the witness, Chander Prakash, in the statement recorded under Section 161 of the CrPC, corroborated the complaint of the complainant and stated that he witnessed Petitioner No.1 using caste-based remarks towards the complainant.

19. The offence under Section 3(1)(r) of the SC/ST Act involves the elements of intentional insult or intimidation aimed at humiliating a member of a Scheduled Caste or Scheduled Tribe within a public view. The purpose of this Act is to enhance the socio-economic conditions of Scheduled Castes and



2024:DHC:6421



Scheduled Tribes, who have historically been deprived of numerous civil rights. Therefore, an offence under this Act is established when a member of these vulnerable communities is subjected to indignities, humiliation, and harassment.

20. The nature of the allegations and the evidence presented before the learned Trial Court create a strong suspicion that the petitioners are involved in the alleged offence. At this stage, this Court finds no error in the impugned order of the learned Trial Court, which formed the opinion that the petitioners may have committed the alleged offence.

21. The Hon'ble Supreme Court in a recent judgment of ***Ghulam Hassan Beigh v. Mohd. Maqbool Magrey : (2022) 12 SCC 657*** held as under :

*“27. it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge-sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. **Even a strong suspicion would suffice.**”*

(Emphasis supplied)

22. In view of the foregoing discussion, having considered the arguments advanced by the learned counsel, *prima facie*, it cannot be said that no case can be made against the petitioner. Therefore, this Court finds no reason to interfere with the

CRL.REV.P. 114/2023

Page 8 of 9

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By: HARMINDER KAUR
Signing Date: 27.08.2024
11:58:14



2024:DHC:6421



impugned order passed by the learned Trial Court.

23. Accordingly, the petition is dismissed in the aforesaid terms.

Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

AUGUST 22, 2024