



IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 19.02.2024

+ **CRL.REV.P. 191/2024**

ASHWANI KHATRI

..... Petitioner

versus

STATE GNCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner :Mr. Pardeep Khatri and Mr. Pranjal Kr. Bhaskar, Advs.

For the Respondent : Mr. Utkarsh, APP for the State with SI Manjeet Singh, PS Hari Nagar

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

CRL.M.A 4233/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.REV.P. 191/2024

3. The present petition is filed under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (**CrPC**) challenging the order dated 07.11.2023 passed by the learned ASJ-02,



Tis Hazari Courts, Delhi, framing charges against the petitioner for offences punishable under Sections 120B/147/302/307/323 read with Section 149 of the Indian Penal Code, 1860 (**IPC**).

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

4.1 FIR No. 269/2022 dated 12.03.2022 registered at Police Station Hari Nagar for offences under Sections 308/323/34 of the IPC, was lodged at the behest of the complainant/victim, namely, Rahul (Under Trial Prisoner) alleging that on 23.02.2022, his co-inmate namely, Ramniwas (deceased) had an altercation with another inmate/accused namely, Rupender. During the altercation, accused prisoner Rupender purportedly threatened the deceased with severe consequences, and to kill him.

4.2 On 24.02.2022, accused Rupendra called the complainant and the deceased to his floor, which led to a sequence of altercations involving them and other inmates. They physically assaulted the complainant and the deceased by giving blows to their chests and bodies, as well as beat them with sticks, resulting in severe injuries to the deceased and injuries to two other inmates.

4.3 The jail officials arrived at the spot of the alleged incident and on finding the victims (complainant and deceased along with two other prisoners) injured, got them admitted to DDU Hospital.

4.4 On 12.03.2023, the victim Ramniwas (UTP) succumbed to the injuries, which led to the registration of the present FIR. Upon



investigation, a charge sheet was submitted under Section 173 CrPC before the competent court and the case was committed for trial and the petitioner/accused was made an accused after recording the supplementary statement of the complainant. It is alleged that the petitioner's involvement can also be made out from the CCTV footage, where he along with other prisoners of Kala Jathedi and Nandu gang can be seen in the barrack kicking and beating the complainant, deceased, and other inmates with sticks.

4.5 *Vide* order dated 07.11.2023, the learned Trial Court framed charges against the petitioner under Sections 120B/147/302/307/323/149 of the IPC.

5. The learned counsel for the petitioner submits that the involvement of the petitioner is solely based on a suspicion arising out of the supplementary statement of the complainant and there is no *prima facie* material regarding the participation of the petitioner in the alleged crime.

6. The learned counsel submits that Section 149 of the IPC could not be attracted in the present case as the offence was made out from a sudden fight between the prisoners, and it cannot be said that the accused prisoners were sharing a common object as the altercation was not pre-meditated instead it happened in the spur of the moment.

7. The learned counsel contends that the role of the petitioner, as per the CCTV footage, is very limited. He can only be seen 'hitting a fist and kicking the victim at the end of the fight'. He cannot be seen using



any weapon to hurt the victim or the deceased. Therefore, the petitioner is only liable for offence under Section 323 of the IPC.

8. He submits that even if the case of the prosecution is taken at its highest, no offence under Section 302 of the IPC is made out against the petitioner as the present case falls within the contours of Exception 4 to Section 300 of the IPC as the death of the deceased was caused without any premeditation in a sudden fight in the heat of passion.

9. The learned counsel submits that the order of framing of charge under Section 302 of IPC by the trial court is contrary to law as there was no intention and motive of the petitioner to kill the deceased.

10. *Per contra*, the learned Additional Public Prosecutor appearing on behalf of the State supported the impugned order and vehemently urged that no interference is warranted by this Court in the impugned order.

11. The learned APP submits that there is sufficient evidence against the petitioner to suspect the commission of the alleged offence, and only after examining the charge sheet and other material available on record, the charges were framed by the learned Trial Court and in the given facts and circumstances, there is no error committed by the Trial Court while framing charges against the petitioner.

12. The Learned APP for the State also submits that when a *prima facie* case is made out against an accused, a detailed enquiry into the merits of the case cannot be conducted at the stage of framing of the charge. It is, thus, contended that the present petition be dismissed.

13. Heard learned counsel for the parties and perused the record.



14. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power 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, has noted that the test is whether the allegations, as made from the record of the case, taken at their highest, constitute the offence or not. The Hon'ble Supreme Court also noted that the Court may interfere if the allegations are patently absurd and the basic ingredients of the offence, for which the charge is framed, are not made out.

15. It is trite law that the learned Trial Court while framing charges under Section 228 of the CrPC, 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 regards to the scope of Sections 227 and 228 of the 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 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)

16. The Hon'ble Apex Court, in ***Bhawna Bai v. Ghanshyam*** : (2020) 2 SCC 217, held as under :



“13. Though the circumstances alleged in the charge-sheet are to be established during the trial by adducing the evidence, the allegations in the charge-sheet show a prima facie case against the accused-Respondents 1 and 2. The circumstances alleged by the prosecution indicate that there are sufficient grounds for proceeding against the accused. At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

17. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts emerging when taken at their face value, disclose the existence of ingredients constituting the offence. The Court only has to form an opinion based on the material placed before it that the accused might have committed the alleged offence. Though, for the purpose of conviction, the same has to be proved beyond reasonable doubt.

18. It is contended that the petitioner was found to be only giving beatings to the deceased even though his death was caused due to sudden cardiac arrest. It is further submitted that the case falls within the provisions of Exception 4 to Section 300 of the IPC as the offence was committed in a sudden fight. It is further contended that the provisions of Section 149 of the IPC cannot be attracted only for the reasons that the petitioner was present with other accused persons at the time when the alleged altercation took place.



19. The FIR was registered on a complaint given by the injured /victim, who specifically narrated that an altercation took place a day prior to the date of the alleged incident between the deceased and co-accused Rupender. It is also specifically alleged that during the altercation, the co-accused Rupender threatened the deceased with severe consequences, and also threatened to kill him. On the date of the alleged incident, the complainant and deceased were called by the co-accused Rupender, and Rupender along with other co-accused persons of Kala Jathedi and Nandu gang assaulted the complainant and the deceased by giving them blows to their chests and body. They were also beaten with sticks, which resulted in severe injuries.

20. The chargesheet further mentions that the CCTV footage shows the petitioner along with other persons beating the complainant and deceased. The petitioner is also seen to be giving blows with sticks to the deceased inside the barrack. The nature of the allegations and the material placed before the learned Trial Court discloses grave suspicion that the petitioner was involved in the offence as alleged. At this stage, this Court finds no error in the impugned order passed by the learned Trial Court in forming an opinion that the petitioner might 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. The contention raised on behalf of the petitioner that the present case falls within the provisions of Exception 4 to Section 300 of the IPC and that the death of the deceased was caused without any premeditation but due to the sudden fight in the heat of the moment, is a matter of trial. At this stage, it cannot be said that Exception 4 to Section 300 of the IPC is apparent from the perusal of the material on record. It is apparent that the altercation took place between the inmates. The allegations made by the complainant are also corroborated by the statements of the other witnesses. There are specific allegations that the co-accused Rupender had threatened the deceased a day prior to the date of the alleged incident with severe consequences and had threatened to kill him. The assembly of the persons, who had beaten the accused and other victims is seen in the CCTV footage, which is corroborated with the statement of the witnesses. The assembly of the accused persons, at this stage, cannot be said to be lawful.



23. It is also contended by the learned counsel for the petitioner that fatal injury was not given by the petitioner and, therefore, he ought not to be charged for offences under Section 302 of the IPC.

24. The Hon'ble Supreme Court in the case of **Ramachandran v. State of Kerala : (2011) 9 SCC 257**, has clearly laid down the ingredients of Section 149 of the IPC. The relevant excerpt of the said judgment is reproduced hereunder:

“17. Section 149 IPC has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting of five or more members, and (ii) such offence must be committed in prosecution of the common object (under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.

18. For “common object”, it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on the spur of the moment; it is enough if it is adopted by all the members and is shared by all of them.

19. In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. (Vide Bhanwar Singh v. State of M.P. [(2008) 16 SCC 657 : (2010) 4 SCC (Cri) 378]) Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under the second part of Section 149 IPC if it can be held that the offence was such as the members knew was likely to be committed. The expression “know” does not mean a mere possibility, such as might or might not happen....There may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 IPC cannot be ignored or obliterated. (See Mizaji v. State of U.P. [AIR 1959 SC 572 : 1959 Cri LJ 777] and Gangadhar Behera v. State



of Orissa [(2002) 8 SCC 381 : 2003 SCC (Cri) 32 : AIR 2002 SC 3633] .)

20. However, once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. (See Daya Kishan v. State of Haryana [(2010) 5 SCC 81 : (2010) 2 SCC (Cri) 1249] ; Sikandar Singh v. State of Bihar [(2010) 7 SCC 477 : (2010) 3 SCC (Cri) 417] and Debashis Daw v. State of W.B. [(2010) 9 SCC 111 : (2010) 3 SCC (Cri) 1158])”

(Emphasis supplied)

25. It is not necessary that a person must have committed some overt act in the actual commission of a crime. Being a member of unlawful assembly, it is enough that he had the knowledge that other co-accused inmates were beating the complainant, deceased, and other inmates at the time, and still he joined the assembly. Thus, once it is *prima facie* established that the petitioner was part of the unlawful assembly, whether the petitioner caused grievous injuries and gave the fatal blows that caused the death of the deceased himself, is of no consequence. It is not the contention of the petitioner that the injuries caused to the deceased and other victims were accidental. The same were, *prima facie*, caused consciously by the accused persons, which at this stage, appears to be enough to cause death in the ordinary course of nature.

26. In the present case, *prima facie*, the altercation which took place between the inmates, cannot be deemed to be a sudden act that provoked



the petitioner, as he only joined the scuffle at a later stage. Moreover, as noted by the learned Trial Court, the statements of the victim/complainant and other prisoners are consistent with the fact that the accused persons had threatened the deceased with dire consequences and to kill him and they beat the deceased and the complainant by giving them blows on the chest and body, and also gave fiber dandas blows and caused riot, in which the deceased got badly injured and two other inmates also suffered injuries. This shows that the accused persons weren't deprived of their self-control.

27. In view of the foregoing discussion, this Court finds no reason to interfere with the impugned order dated 07.11.2023 passed by the learned Trial Court.

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

29. It is clarified that the observations made in this order are only for the purpose of deciding the present petition and shall not influence the outcome of the trial.

AMIT MAHAJAN, J

FEBRUARY 19, 2024 / UG/SK