



2024 : DHC : 2984



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

*Date of decision: 10.04.2024*

+ **CRL.M.C. 2247/2024 & CRL.M.A. 8725/2024**  
**SANJAY GOHAIN**

..... Petitioner

Through: Ms.Nanda Devi Deka, Mr.K.S.  
Jaggi, Mr.Zain Haider &  
Mr.Savyasachi Rawat, Advs.

versus

**STATE OF NCT OF DELHI**

..... Respondent

Through: Mr.Aman Usman, APP.  
SI Pawan Kumar, PS Gandhi  
Nagar.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 09.05.2023 passed by the learned Metropolitan Magistrate, East District, Karkardooma Courts in Criminal Revision No.3803/2020 titled *State v. Sanjay Gohain*, thereby framing charges against the petitioner for offence under Sections 365/380/341/323/506/34 of the Indian Penal Code, 1860 (in short, 'IPC'), and the order dated 03.01.2024 of the learned Additional Sessions Judge-04, East District,



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Karkardooma Courts, Delhi passed in CR No. 175/2023 titled ***Sanjay Gohain v. State***, dismissing the revision petition filed by the petitioner herein.

2. It is the case of the prosecution that on 13.11.2019, the complainant made a complaint that on 12.11.2019, at about 12:15 PM when he opened his shop at House No. X/1140, New Chand Mohalla, Gandhi Nagar, Delhi, 2-3 boys came there and started beating him. They forcefully took him to the back door of the first floor of the said premises in the house of the landlord- Ram Ratan Rathi and kept on beating him. They then took his thumb impression on 3-4 blank papers and made him sit in a rickshaw in front of House No. 1199, Gali No.2, Rajgarh Colony, Delhi, and took him to the Jheel Chowk. They later called for an auto and forcefully made the complainant sit in that auto and left him at some unknown location. When the complainant came back to the shop, he saw a mob of people gathered near his shop. He later found that his mobile phone, shop keys, gold chain, and Rs.12,000/- were missing. On this complaint, the above FIR was registered.

3. Later, the complainant gave another complaint stating that he had received a threatening call on his mobile phone from the petitioner herein, who threatened to kill him. On examining the CCTV footage of the nearby area, it was confirmed that the petitioner was one of the alleged assailants who was accompanying the complainant and made him sit in the auto rickshaw. He is alleged to have given a disclosure statement of



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having committed the offence at the instance of the wife of the landlord of the complainant, that is, Ms. Padmini, and of the co-accused-Ms. Khyati, who is the daughter of the landlord of the complainant, as the one having obtained the signatures of the complainant on some blank papers.

4. On completion of the investigation, a charge-sheet was filed.

5. As noted hereinabove, the learned Metropolitan Magistrate, by the order dated 09.05.2023, framed charges against the petitioner under the above-mentioned Sections. Aggrieved of the said order, the petitioner challenged the same by way of a Revision Petition, being CR No. 175/2023, which has been dismissed by the learned Additional Sessions Judge by the Impugned Order dated 03.01.2024.

6. The learned counsel for the petitioner submits that the petitioner was known to the complainant, in spite of the same, he was not named by the petitioner in the first complaint that was filed with the Police. She further submits that the petitioner is merely seen in the CCTV footage as making the complainant sit in an auto-rickshaw. She submits that on the basis of such evidence alone, the petitioner cannot be charged for the offence(s) as has been charged by the Impugned Order. In support, she places reliance on the judgments of the Supreme Court in *R.S. Mishra v. State of Orissa*, (2011) 2 SCC 689 and *Pushpendra Kumar Sinha v. State of Jharkhand*, (2022) SCC OnLine SC 1069, to submit that the learned Metropolitan



Magistrate, at the stage of framing of charge, is to sift the evidence and decide if from the facts emerging on the record and the documents filed by the prosecution, an offence is made out against the accused. The Court is not expected to mirror the prosecution's theory but to consider the broad probability of the case. The Court has to give reasons for framing of the charges.

7. On the other hand, the learned APP submits that there is enough material on record before the learned Trial Court for framing charge. He submits that at the stage of framing charge, the Court is not expected to give detailed reasons for the same. He further submits that the test to be applied at this stage is only of a *prima facie* case being made out against the accused. He places reliance on the judgement of the Surpeme Court in ***State of Gujarat v. Dilipsinh Kishorsinh Rao***, 2023 SCC OnLine SC 1294, in support of his submission.

8. I have considered the submissions made by the learned counsels for the parties.

9. It is the specific case of the prosecution that the petitioner is seen making the complainant sit in an auto-rickshaw forcefully. The complainant has also been steadfast in stating that the petitioner was one of the boys who had come to his shop, beaten him, and thereafter forcefully taken his thumb impressions. He has also filed a second complaint alleging that he had received threatening calls from the mobile belonging to the petitioner. As per the prosecution, the CDR of the threatening calls was found to be belonging to the petitioner.



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Therefore, in my view, there is sufficient material for proceeding against the petitioner at the present stage.

10. As has been held by the Supreme Court in ***State of Rajasthan v. Ashok Kumar Kashyap***, (2021) 11 SCC 191, at the stage of framing of charge, the Court is not to find the accused guilty beyond reasonable doubt but only on the touchstone of probability of a case being made out against the accused.

11. In ***Dilipsinh Kishorsinh Rao*** (Supra), the Supreme Court has observed as under:

*“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. As far as the plea that the order of the learned Metropolitan Magistrate was without reasons, I must herein note that the petitioner challenged the same by way of a Revision Petition, and the said Revision Petition came to be dismissed with detailed reasons, as have been recorded in the Impugned Order dated 03.01.2021. This is not a second revision against the said order.

13. As regards the plea of the petitioner that the petitioner was known to the complainant, however, in spite of the same, the complainant did not mention him by name in the first complaint, there is presently no material on record to establish the said fact. Merely because the petitioner claims himself to be



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a tenant of the same landlord, it cannot be presumed at the present stage that he was known to the complainant. In any case, this will be a matter of defence of the petitioner and will be considered at an appropriate stage by the learned Trial Court.

14. Accordingly, I find no merit in the present petition. The same is dismissed. The pending application is also disposed of.

**NAVIN CHAWLA, J**

**APRIL 10, 2024/rv/RP**

*Click here to check corrigendum, if any*