



2024:DHC:7255



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.09.2024

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CRL.REV.P. 574/2023 & CRL.M.A. 13728/2023

MAYANK BANSAL

..... Petitioner

versus

THE STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. A. K. Mishra, Adv. for petitioner

For the Respondent : Mr. Mukesh Kumar, APP for the State for the State with Ms. Ankita Dogra and Ms. Kirti Arora, Adv. with SI Kavish Rana, PS Laxmi Nagar, Delhi

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Sections 397/401 of the Criminal Procedure Code, 1973 ('CrPC') seeking setting aside of the order dated 16.03.2023 (hereafter '**the impugned order**') passed by learned Additional Sessions Judge-04 (ASJ), Karkardooma Courts, Delhi ('**Trial Court**') arising out of FIR bearing no. 164/2019 dated 20.06.2019, registered at Police Station Laxmi Nagar for offences



under Sections 307/ 34 of the Indian Penal Code, 1860 (**‘IPC’**) and Sections 25/27 of the Arms Act, 1959 (**‘Arms Act’**).

2. The learned Trial Court, by the impugned order, framed charges under Sections 307/34 of the IPC against the petitioner.

3. The seminal facts relevant for the purpose of the present petition are:

3.1 FIR No. 164/2019 was registered based on the complaint of the victim, Shahid Khan @ Sunny, who alleged that on 19.06.2019, around 5:00 PM, while he was on his way to meet his uncle, he encountered the accused, Vipin Nagar, and another individual sitting on a scooty without a number plate. They were allegedly harassing the girls passing by, and when the complainant intervened, both of them assaulted him and threatened to kill him before leaving on their scooter.

3.2 It is further alleged that around 5:45 PM, as the complainant was returning home, he was surrounded by accused - Vipin Nagar along with CCL ‘S’, Kunal, Arpit Sharma, and Dishant Kumar. During this confrontation, Kunal and Dishant Kumar allegedly pointed a pistol at the complainant’s stomach.

3.3 At that moment, the complainant’s neighbour, Jeet Singh came to help him. In response, Kunal allegedly aimed the pistol at Jeet Singh and fired, resulting in a gunshot wound to Jeet Singh’s right leg. It is further alleged that the other accused were inciting the attackers to kill both the complainant and Jeet Singh.

3.4 It is alleged that the commotion attracted the attention of



nearby residents, who gathered at the scene and attempted to apprehend the accused. However, the accused fled, firing shots into the air, and abandoning two scooters at the scene.

3.5 During investigation, the CCTV footage was obtained, showing accused, Vipin Nagar carrying a pistol, which was also seen in co-accused - Kunal's possession for some time. Another scooter allegedly involved in the incident was driven by co-accused - Sunny Yadav, with Mayank Bansal/petitioner and Saksham as passengers.

3.6 Following the investigation, chargesheet was filed against the petitioner under Sections 307/34 of the IPC.

3.7 Thereafter, the learned ASJ by the impugned order framed charges against the petitioner for offences punishable under Sections 307/34 of the IPC, and held as under:

“6. Perusal of the record reveals that supplementary statement of complainant Shahid Khan was recorded in which he disclosed names of other accused persons to be Saksham, Paras and Mayank Bansal. Injured Jeet Singh in his statement recorded u/s 161 Cr.P.C. also supported the prosecution story and named all accused as well as specifically stated that accused Kunal fired at him due to which he received bullet injury on his right leg and accused Vipin Nagar fired at him aiming his head with intention to kill him but he saved himself. IO also recorded statements u/s 161 Cr.P.C. of other eye witnesses namely Ajay Singh, Yash @ Satish and Amit Sharma and they also supported the prosecution story. Injured Jeet Singh also produced his DVR which contained CCTV footage of the incident, photographs and pen drive containing CCTV footage. During investigation, IO also seized two empty cartridges and two scooties (one scooty of make Activa Honda of grey colour and another scooty bearing no. DL-3S-DB-7673 make Aviator Honda) from the spot. During investigation after receiving notice, one Sunny



Behal produced third scooty involved in the crime bearing no. DL-7SC-G-9411, which was taken by accused Mayank from his friend.

7. *Perusal of the MLC of complainant Shahid Khan reveals that the nature of injuries received by him was opined as 'simple'. As per MLC of Jeet Singh, he received lacerated wound on his right leg and nature of injury was opined as 'simple. Doctor took swab from wound site for gun powder residue examination. As per FSL result, the Gun Shot Residue (OSR) particles have been detected on the wound site swab.*

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9. *As per charge-sheet, the weapons of offence i.e. pistols could not be recovered during PC remand of accused Kunal and Vipin Nagar. However, since accused Kunal and Vipin Nagar had fired on Jeet Singh from their pistols and two empty cartridges were recovered from the spot and as such both of them are liable to be charged for the offences u/s 27 Arms Act. During interrogation accused Vipin Nagar disclosed that the one Sumit had provided him the pistol, weapon of offence, and after incident he had handed over the said pistol to one Karan. Said Sumit, Karan and accused Paras could not be traced out and as such supplementary charge sheet has not yet been filed against them.*

10. *In view of above discussion and material available on record, I am of the opinion that prima facie there is sufficient material on record to frame charge u/s 307/34 IPC against accused Kunal @ Harsh, Saksham @ Nanu, Vipin Nagar, Sunny Yadav, Arpit Sharma, Dishant Kumar and Mayank Bansal. Accused Kunal and Vipin Nagar are also liable to be charged for the offences u/s 27 Arms Act. Accused Vipin Nagar is also liable to be charged for the offence u/s 174A IPC. Accordingly, charges be framed against the accused persons."*

3.8 By order dated 25.02.2023, the learned Trial Court, while taking into consideration the MLC of the complainant – Shahid Khan wherein the injuries sustained by him were opined to be 'simple' in



nature also framed charge for the offence under Section 323/34 of the IPC against the petitioner.

3.9 Aggrieved by the impugned order, the present revision petition has been preferred by the petitioner.

4. The learned counsel for the petitioner submitted that the petitioner was merely an onlooker and even a bare perusal of the FIR and chargesheet show that he had no role to play in the alleged offence.

5. He submitted that the complainant knew and identified all the assailants and has duly disclosed their names. The petitioner was not named by the victim as one of the assailants. He stated that the petitioner, is seen in the CCTV footage, coming to the spot subsequent to the alleged incident, as a mere onlooker.

6. He submitted that the alleged incident took place in two phases one, at 5PM when the complainant was going to his uncle's place, and the other incident had occurred at 5:45PM when he was returning from there and in none of the two phases the petitioner was present or was named by the complainant.

7. *Per contra*, the learned Additional Public Prosecutor for the State submitted that that the merits and demerits of the evidence collected during the investigations, cannot be sifted, and considered minutely and would be determined after the trial. At the time of framing of charge, only the *prima facie* view on the basis of the evidence collected, has to be taken.

8. He submitted that there is no infirmity in the order passed by



the learned Trial Court and a well-reasoned order is passed by the learned Trial Court after considering the material on record and warrants no interference. Thus, it is prayed that the present petition be dismissed.

9. Arguments advanced by the learned counsel for the parties were heard and the material placed on record is also perused.

10. Since the petitioner has assailed the impugned order framing charges against the respondent, 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 same is set out below :

“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.

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 subsection (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.”

11. 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.

12. 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)

13. 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 :-

“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.”

14. 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.

15. It is not the case of the prosecution that the petitioner caused injury to the victim, instigated the accused to commit the alleged offence, or had any weapon in his possession. Notably, the complainant and the victim did not name the petitioner in the FIR; his name was only mentioned in a supplementary statement alleging that the petitioner was seen with other accused persons at the place of the alleged incident. Additionally, no Call Detail Records (CDRs) have been presented to establish a common intention or connection linking the petitioner to the alleged offence.

16. Section 34 of the IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one,



into others, in pursuance to a common intention. The word “furtherance” indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion. A mere common intention *per se* may not attract Section 34 of the IPC, *sans* an action in furtherance.

17. Therefore, mere presence by itself cannot be of criminal nature in the sense that by the mere presence of the petitioner a common intention cannot be attributed to the petitioner. *Prima facie*, no overt act is attributed to the petitioner in the facts of the present case. It is sufficed to say that mere presence of a person at the time of commission of an offence by his confederates is not, in itself sufficient to bring his case within the purview of Section 34 of the IPC, unless community of designs is proved against him.

18. Under these circumstances, there is no reasonable suspicion that the petitioner may have committed the alleged offence for which the chargesheet has been filed, and the matter should not proceed to trial.

19. The role of the Trial Court at the stage of framing of charge is limited and has to be guided by Section 228 of the CrPC and the judicial precedents including the ones which have been mentioned in the preceding paragraphs. At the stage of framing of charge, the Court’s primary task is to ascertain whether a *prima facie* case exists against the accused on the basis of material placed on record by the prosecution. The broad test to be applied is whether the materials on record, if unrebutted makes a conviction reasonably possible.

20. When there is no iota of legally admissible evidence against the



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petitioner to go for trial, doing so would be itself violative of Article 21 of the Constitution of India, as the same cannot be said to be the procedure established by law. When two views are possible, one which gives rise to some suspicion as distinguished from grave suspicion, the accused is entitled for the benefit of discharge.

21. In the absence of any sufficient grounds for proceeding against the petitioner, this Court finds it appropriate to set aside the impugned order to the extent of framing charges against the petitioner, and discharge the petitioner of the alleged offences.

22. In view of the above, the present petition is allowed.

AMIT MAHAJAN, J

SEPTEMBER 20, 2024