



2024:DHC:7252



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:20.09.2024

+ **CRL.REV.P. 582/2023 & CRL.M.A. 13930/2023**

KUNAL ALIAS HARSH

..... Petitioner

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Kunal Jain and Ms. Shraddha Kushwaha, Advs.

For the Respondent : Mr. Mukesh Kumar, APP for the State for the State with Ms. Ankita Dogra and Ms. Kirti Arora, Advs. 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 and under Section 27 of the Arms Act.
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', petitioner/Kunal, Arpit Sharma, and Dishant Kumar. During this confrontation, the petitioner 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, the petitioner 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 the petitioner's possession for some time. Another scooter allegedly involved in the incident was driven by co-accused - Sunny Yadav, with Mayank Bansal 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, as noted above, the learned ASJ by the impugned order framed charges against the petitioner for offences punishable under Sections 307/34 of the IPC and Section 27 of the Arms Act, 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 aforesaid decision, the present revision petition has been preferred by the petitioner.
4. The learned counsel for the petitioner argued that firstly, the learned Trial court failed to assess the intention of the petitioner behind hurting the complainant and the victim as the petitioner was neither present nor aware about the alleged incident. Secondly, he argued that the learned Trial Court failed to take into consideration that no bullet mark was collected by the Investigating Officer neither were any remains of the bullet found. Lastly, he argued that the learned Trial Court failed to appreciate medical evidences of the complainant and the victim which clearly shows that they have not received any serious injury which could likely cause death.
5. He further submitted that the learned Trial Court failed to appreciate that there is no injury which has been inflicted on a vital part of the body of the victim in the present case, which would also show that offence under section 307 of the IPC in the present case is not made out. Further, the learned Trial Court failed to consider that mere fact that a firearm was used to cause injuries to the victim will not necessarily bring the case under section 307 of the IPC.
6. *Per contra*, the learned Additional Public Prosecutor (**APP**)



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.

7. 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.

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

9. Since the petitioner has assailed the impugned order framing charges, 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 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.”

10. 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.

11. 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)

12. 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.”

13. 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.

14. In this backdrop, the facts as alleged in the present petition, maybe considered. Undeniably, the alleged incident took place on 19.06.2019 when the complainant – Shahid Khan, was shot by the petitioner on his right leg, and the victim– Jeet Singh was injured during the commotion between the parties whereafter, the assailants sped away on their motor cycle.

15. The statement of the complainant – Shahid Khan recorded



under Section 161 of the CrPC, along with the corroborating testimony of the victim Jeet Singh and other eyewitnesses, provides substantial evidence supporting the prosecution's narrative. Additionally, during the investigation, the DVR footage, CCTV footage, photographs, were collected from the place of incident wherein the petitioner is seen with a pistol at the scene of crime which further bolsters the case against the petitioner. The medical reports indicate that both Shahid Khan and Jeet Singh sustained injuries during the alleged incident, with gunshot residue detected on Jeet Singh's wound site. It is the case of the prosecution that the victim – Jeet Singh and the complainant – Shahid Khan have unequivocally identified the petitioner as the individual who fired the shot that resulted in the bullet wound to his right leg.

16. So far as Section 307 of the IPC is concerned, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. (Ref : ***Bappa alias Bapu vs. State of Maharashtra and Another* : AIR 2004 SC 4119**)

17. As a matter of fact, Section 307 IPC does not even require proof of an injury, let alone an injury which is a life threatening or dangerous injury. The provision centers on the intent behind the act rather than its outcome. The law punishes the intent to commit



murder, even if the attempt fails or is thwarted before the actual infliction of harm. In the present case, the petitioner is alleged to have been seen carrying a pistol and is accused of firing at the victim during the incident.

18. From the plain reading of Section 307 of the IPC, it is clear that presence of injury is not *sine qua non* for making out an offence under Section 307 of the IPC. If any act is done with an intention or knowledge that, if assailant by that act causes death, that would make the assailant guilty of murder, then such act would certainly be punishable under Section 307 of the IPC. The petitioner's intention and the surrounding circumstances will be evaluated during the trial. At this stage, the contention that the offence under Section 307 of the IPC is not made out against the petitioner is premature and cannot be sustained.

19. This Court also finds that the impugned order passed by the learned Trial Court, is a well-reasoned speaking order. 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.

20. 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)

21. It is too early on the part of this Court to arrive at the conclusion that since no serious injuries were noted in the MLC of the victim – Jeet Singh, the offence under Section 307 of the IPC cannot be made out.
22. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. Where a higher charge is not framed for which, there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. The prosecution case is necessarily limited by the charge.
23. 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 out against the petitioner. Therefore, this Court finds no reason to interfere with the impugned order passed by the learned Trial Court.



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24. Accordingly, the petition is dismissed in the aforesaid terms. Pending application(s) also stand disposed of.

25. 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

SEPTEMBER 20, 2024