



2024:DHC:3205



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

Date of decision: 23.04.2024

+ **CRL.REV.P. 524/2024**

ABDUL SALAM

..... Petitioner

Through: Mr.Tushar Swami and Mr.Nihal
Ahmad, Advs.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr.Shoaib Haider, APP with
Ms.Tripti Mishra, Adv. with SI
Ajit Krishna.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 11904/2024 & CRL.M.A. 11841/2024 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, challenging the Order dated 10.01.2024 passed by the learned Additional Sessions Judge-02, North East District, Karkardooma Courts, Delhi in Sessions Case No.186/2022, titled *State v. Abdul Salam*, arising out of FIR No.494/2014 registered at Police Station: Gokul Puri under Sections 323/308/147/149 of the Indian Penal Code, 1860 (in short, 'IPC').

Case of the Prosecution

3. It is the case of the prosecution that on 12.05.2014, upon a

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complaint being received regarding snatching of Five Thousand Rupees and a fight happening, the police reached the place of incident, that is, 25 foot road Noor Masjid, Gali No.14, Old Mustafabad, Delhi. At the spot it was found that two parties, including that of the petitioner herein, were fighting with each other with *dandas*, *lathis*, hockeys, and were pelting stones at each other. In this fight, several persons were injured. The Police Officials somehow controlled and pacified the crowd, but while doing so, the attackers ran away, and some injured persons from the petitioner's party were left behind, who were then admitted to the GTB Hospital for treatment.

4. By the Impugned Order, the learned Trial Court, while discharging the accused, Hasimuddin, Moin Saifi and Firoz Saifi, on the ground that for the same incident, a cross FIR had been registered against them wherein they have been made accused, proceeded to charge *inter alia* the petitioner under Sections 308/323/147/149 of the IPC.

Submissions of the learned counsel for the petitioner

5. The learned counsel for the petitioner, placing reliance on the Report dated 02.09.2014 of the Additional Deputy Commissioner of Police, North East District, Delhi, submits that, in the said report, the additional DCP had found ASI Hukum Singh, on basis of whose statement and complaint the subject FIR has been registered, as negligent and stated that a disciplinary action has been initiated against him.

6. He further submits that, as per the case of the prosecution, two



groups of persons were fighting with each other. If one group of persons has been discharged by the learned Trial Court, there can be no reason for continuing the case against the other, as they cannot be fighting the same group.

7. He submits that, in fact, the present FIR is a result of connivance of ASI Hukum Singh with the other group of persons.

Submissions of the learned APP

8. The learned APP, on the other hand, points out that Hasimuddin, Moin Saifi and Firoz Saifi have been discharged from the case only for the reason that they are facing a criminal trial in another case on the same incident. They have not been discharged on merit or having been found as not being involved in the incident. He submits that, therefore, their discharge from the present case will have no effect as far as the prosecution against the petitioner is concerned.

Analysis and Findings

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

10. As is noted hereinabove and also in the Impugned Order, on 12.05.2014, a mob of persons had assembled at the place of the incident and were pelting stones at each other. They were also attacking each other with *lathis* and *dandas*, as a result of which several persons were injured, including some having suffered head injuries, though these were described as simple in nature.

11. Taking into view the totality of the circumstances, the learned



Trial Court, therefore, proceeded with framing charges *inter alia* against the petitioner herein under Sections 308/323/147/149 of the IPC. It is well settled that at the stage of framing of charge, the learned Trial Court has only to find a *prima facie* case to proceed against the accused. It is not to test the case of the prosecution on the standard of proof beyond reasonable doubt. In ***State of Gujarat v. Dilipsinh Kishorsinh Rao***, 2023 SCC OnLine SC 1294, the Supreme Court re-emphasized this principle, 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 discharge of the other accused, namely, Hasimuddin, Moin Saifi and Firoz Saifi, is concerned, they were discharged from the case in question only for the reason that they are facing another trial arising out of FIR No.538/2017 on the same incident. They could not have been made to suffer two different trials for the same incident. They would be properly dealt with by the concerned Court in that trial. This Court need not express any opinion on the same. However, this cannot be a reason to fault the Impugned Order as far as the petitioner is concerned.

13. Accordingly, I find no merit in the present petition. The same is dismissed. The pending application also stands disposed of having been rendered infructuous.

NAVIN CHAWLA, J

APRIL 23, 2024/ns/am

Click here to check corrigendum, if any