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

+ **CRL.REV.P. 640/2023**

STATE GOVT OF NCT DELHI

..... Petitioner

Through: Mr. Ritesh Kr. Bahri, APP
for the State with Mr. Lalit
Luthra, Adv. with Insp.
Yogendra Kumar, PS
Sultanpuri.

versus

VIJAY MALIK & ORS.

..... Respondents

Through: Mr. Ankit Rana and Mr.
Tushar Rohmetra, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

16.05.2024

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1. The present petition is filed under Sections 397/401 of the Code of Criminal Procedure, 1973 ('CrPC') read with Section 482 of the CrPC challenging the order dated 17.10.2022 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge (**ASJ**), North West District, Rohini Courts, Delhi, in Cr Case 683/2018 arising out of FIR No.499/2015, registered at Police Station Sultan Puri, for offence under Section 392/34 of the Indian Penal Code, 1860 ('**IPC**').

2. The learned ASJ, by the impugned order, allowed the revision petition filed by the respondents and set aside the order on charge dated 24.06.2022, passed by the learned Trial Court, and remanded the matter back to the learned Trial Court to consider if any other charge was made out.

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3. The brief facts of the case are as follows:

3.1. The FIR was lodged by the complainant, namely, Naresh Kumar. It was alleged that the accused persons hit the motorcycle of the complainant with their Santro car when he had stopped on the red light due to which the complainant fell down. It was alleged that the accused then got down from the car and started beating the complainant. It is alleged that one of the accused took the 6 notes of ₹500 each from the pocket of the pants of the complainant. Thereafter, the accused persons fled from the place of incident in their car.

3.2. The chargesheet mentioned that the complainant kept changing his statement and stated that the assailants had touched his motor cycle with their car. The same also mentioned the version of the respondents wherein they have admitted that they engaged in a quarrel with the complainant due to their car having touched the motorcycle of the complainant, which led to a scuffle. One of the accused persons is stated to have expired during the course of the proceedings.

3.3. The learned Trial Court by order on charge dated 24.06.2022 had framed charges against the accused persons/ Respondent Nos. 1 to 3 for offences under Sections 392/34 of the IPC.

3.4. The learned ASJ, by the impugned order, set aside the order on charge dated 24.06.2022, passed by the learned Trial Court, and remanded the matter to the learned Trial Court.

3.5. The impugned order is challenged by the State by way of the present revision petition, which was filed on 09.05.2023.

4. At the outset, it is pointed out that after the matter was remanded back by the learned ASJ, charges were framed for the



offences under Sections 323/34 of the IPC. Thereafter, the present FIR has already been compounded by the parties by the order dated 24.04.2023, passed by the learned Trial Court, in Cr Case 883/2018.

5. The learned Additional Public Prosecutor ('**APP**') for the State submits that there has been an inadvertent error. Even though the said order was passed prior to filing of the present petition, the same could not be mentioned in the present petition. He seeks unconditional apology for the same.

6. It is seen that the impugned order was passed way back on 17.10.2022 and the present petition was filed on 09.05.2023. There is an admitted delay in filing the present petition. The present petition is also not supported with any application seeking condonation of delay. The learned APP tenders an unconditional apology for the said error as well and requests for indulgence of this Court.

7. On merits, the learned APP for the State submits that the learned ASJ has passed the impugned order by considering the subsequent statements. He submits that the discrepancies in the statements of the complainant are a matter of trial.

8. He submits that it is settled law that the evidence has to be merely sifted at the stage of arguments on charge and the learned ASJ fell into error by conducting a roving enquiry into the evidence at the stage of hearing the argument on charge. He submits that the same is not permissible.

9. I have heard the counsel for the parties and perused the record.

10. It is pertinent to note that the present case was instituted belatedly by the State without an application for condonation of



delay after the parties had already compounded the matter. The said fact was not disclosed in the petition either.

11. Although the learned APP has apologised for these lapses, no satisfactory explanation has been provided as to why the said fact was not brought to the notice of this Court on 31.05.2023, when the notice was issued to the respondents, or on the dates when the matter was listed thereafter.

12. Furthermore, on the last date of hearing, that is, 22.01.2024, despite requesting for an opportunity to file an application seeking condonation of delay, no such application has been filed explaining the reason for delay. The learned APP has stated that the delay was caused due to bureaucratic processes and requested that the delay be condoned on his oral request and a liberal approach may be taken given the extent of delay and considering that the litigant is the State.

13. In the interest of justice, the delay is condoned on the oral request made by the learned APP, subject to payment of cost of ₹10,000/-, to be payable to the Delhi High Court Legal Services Committee, within a period of eight weeks from date. Proof of deposit of cost to be furnished to the Registry of this Court.

14. In the present case, the State is essentially contesting the impugned order on the ground that the learned ASJ erroneously assessed the discrepancies in the statements of the complainant and conducted a mini trial rather than sifting the evidence.

15. It is relevant to note that the learned ASJ observed that it is a cardinal principal of law that where two views are possible, the Court ought to adopt the version which favours the accused persons. It was observed that there was a discrepancy in the statements of the complainant whereby the complainant had



subsequently stated that while he had lost an amount of ₹3,000/- in the scuffle, however, he wasn't sure if the amount had fallen down or robbed by the assailants. The learned ASJ opined that the learned Trial Court committed an error in accepting the version present by the complainant in his initial statement without considering the latter versions that were part of the chargesheet and favourable to the accused persons.

16. It is trite law that the Trial Court, at the stage of framing charges under Section 228 of the CrPC, is not required to conduct a roving enquiry into the evidence. However, it is incumbent on the Trial Court to peruse the record of the case and the submissions of the accused persons and the prosecution to ascertain whether grave suspicion exists that the accused person has committed the crime.

17. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI: (2010) 9 SCC 368***, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraph reads as under:

“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)

18. A bare perusal of the order on charge dated 24.06.2022 shows that the learned Trial Court had not appreciated the changing versions of the complainant and merely



brushed aside the contention of the accused persons in this regard. The relevant portion of the order on charge dated 24.06.2022 is reproduced hereunder:

“As regards the contention of the Ld. Counsel for accused regarding the changing versions of the complainant, the same is a matter of trial and need not be looked into at this juncture.”

19. It is settled law that an accused person has no right to call upon the learned Trial Court to examine any material placed by him pertaining to his defence, however, Section 227 of the CrPC mandates that the Judge is required to consider the material on record and consider the submissions of the prosecution as well as the accused persons.

20. It is not disputed that the changing versions of the complainant were a part of the chargesheet and the averment of the accused persons in this regard were not duly considered by the learned Trial Court while framing the charge.

21. Moreover, as also noted by the Hon'ble Apex Court in ***Sajjan Kumar v. CBI (supra)***, the learned ASJ rightly observed in the impugned order that where two views are possible, the trial Court is empowered to discharge the accused persons and adopt the view that gives rise to mere suspicion instead of grave suspicion and benefits the accused persons.

22. In the present case, from the material on record, it appears that the incident was caused due to road rage after the car of the accused persons touched the motorcycle of the complainant. As noted above, the parties have since compromised the matter and compounded the dispute.

23. In such circumstances, in the opinion of this court, the learned ASJ did not commit any error in appreciating the latter



version of the complainant and setting aside the order on charge dated 24.06.2022, whereby charges were framed for the offence under Section 392/34 of the IPC, and remanding the matter to the learned Trial Court to consider if any other charge is made out.

24. In view of the above, this Court finds that the impugned order suffers from no irregularity, illegality, impropriety, or perversity and no ground is made out to warrant any interference in the impugned order.

25. Accordingly, the present petition stands dismissed.

AMIT MAHAJAN, J

MAY 16, 2024

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