



2024:DHC:2415



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 22.03.2024***

+ CRL.M.C. 4778/2022 & CRL.M.A. 19243/2022
SARABJIT SINGH AHLUWALIA Petitioner
Through: Mr.Sudarshan Rajan, Adv.

versus

THE STATE OF NCT OF DELHI Respondent
Through: Ms.Priyanka Dalal, APP.
Mr.Ankush Narang, Ms.Ritika
Godhwani, Advs. for
complainant.

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 14.07.2022 passed by the learned Additional Sessions Judge-03, South East District, Saket Courts, New Delhi in Criminal Revision Petition No.776/2019, titled *Sarabjit Singh Ahluwalia v. The State of NCT of Delhi*, dismissing the said Revision Petition.
2. The above Revision Petition was filed by the petitioner challenging the Order dated 04.10.2019 passed by the learned Metropolitan Magistrate, South East District, Saket Courts, New Delhi (hereinafter referred to as the 'Trial Court') in the proceedings emanating from FIR No.39/2017 registered at Police Station: Amar



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Colony, South East District, New Delhi, whereby the learned Trial Court ordered framing of charge under Section 420 of the Indian Penal Code, 1860 (in short, 'IPC') against the petitioner herein, while discharging other accused persons.

3. It is the case of the prosecution that the above FIR was registered on the complaint of Mr.Suryadeep Ahluwalia, son of late Mr.J.S. Ahluwalia, stating that his father Late Mr.J.S. Ahluwalia had an FDR dated 18.07.2022 with Canara Bank, East of Kailash, New Delhi with maturity value of Rs.2,00,527/-. It is alleged that though the photocopy of the FDR was with the complainant, the original FDR was not traceable. The Complainant alleged that when he went to the Canara Bank to inquire about the FDR, he came to know that the said FDR has already been encashed by the petitioner, who is the elder brother of his father, in connivance with the bank officials by forging his signature.

4. The prosecution, on investigation, alleges that the said FDR bears the signatures of the petitioner on the backside of the same. It is alleged that the employees of the bank were examined and it came to record that the original FDR in question is with the bank but there was no marking on the back of the certificate of the FDR that the said FDR is under any lien, guarantee, or security with the said bank. It is alleged that the FDR was encashed by the bank in the name of the Company- M/s Suntime Energy Limited on the mandate of the petitioner herein.

5. The prosecution further alleges that the bank officials maintained that the FDR had been encashed strictly in accordance



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with the banking guidelines and in the discharge of the loan transaction which was taken by the abovementioned Company. The proceeds from the FDR were also credited to the account of the said Company.

6. As far as the allegation of forging the signature of late Sh.J.S. Ahluwalia is concerned, the prosecution did not find any evidence for the same.

7. On the completion of the investigation, the chargesheet and a supplementary chargesheet under Section 420/34 of the IPC were filed.

8. The learned Trial Court, vide Order dated 04.10.2019, proceeded to frame a charge under Section 420 of the IPC against the petitioner. As noted hereinabove, the petitioner challenged the same by way of a Revision Petition, which came to be dismissed by the Impugned Order.

9. The learned counsel for the petitioner, placing reliance on the correspondences dated 20.04.2017, 06.06.2017, and 04.10.2017 by the officials from the Canara Bank to the police, submits that the Canara Bank has certified that the Company had availed of the loan/credit facility from the Canara Bank for about 10 years; all the directors, including Mr.J.S. Ahluwalia, had offered their personal guarantees for repayment of the said loan amount; all the Directors had also given FDRs in their personal capacity as a margin/collateral security for various credit facilities availed by the Company; in the year 2009, the loan account became irregular and, in order to recover the overdue amount, the bank was compelled to adjust the FDR of the directors to



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the loan amount of the said Company in the year 2011; and that the signatures of the petitioner on the back of the subject FDR in the name of late Mr.J.S. Ahluwalia was irrelevant, inasmuch as the bank had the full authority to encash the said FDR even otherwise.

10. Placing reliance on the above letters/correspondences, the learned counsel for the petitioner submits that late Mr.J.S. Ahluwalia, as the Director of the Company, had executed a Guarantee Agreement in favour of the Canara Bank and had also deposited the FDR in his personal name to the bank as a security. He submits that this FDR was encashed by the bank as the Company could not repay the loan/credit availed. He submits that the learned Trial Court as also the learned Revisionist Court have proceeded to frame the charge against the petitioner only because the signatures of the petitioner appear on the backside of the said FDR. He submits that the said signatures are irrelevant inasmuch as the bank had full authority even otherwise to encash the FDR.

11. He further submits that the learned Trial Court and the learned Revisionist Court had supplied emphasis on the fact that the said FDR did not bear an endorsement of lien with the bank while other FDRs had such an endorsement. He submits that the learned Trial Court and the learned Revisionist Court failed to appreciate that the FDR in question had been prepared on a renewal of the original FDR that had been given by late Sh.J.S. Ahluwalia, which had such an endorsement.

12. Placing reliance on the judgment of the Supreme Court in *Dr.Vimla v. Delhi Administration*, 1963 Supp (2) SCR 585, he submits that the FDR was given as a security for the loan/credit



facility availed by the bank and the proceeds of the FDR were duly deposited towards the said account alone and, therefore, the charge under Section 420 of the IPC is not made out against the petitioner.

13. Placing reliance on the judgment of the Supreme Court in *Parminder Kaur v. State of Uttar Pradesh & Anr.*, (2010) 1 SCC 322, he submits that the signature on the backside of the FDR being irrelevant to the transaction, no charge under Section 420 of the IPC is made out.

14. On the other hand, the learned APP and the learned counsel for the Complainant submit that in the present case, there is no endorsement on the subject FDR that the same is being deposited as a security for the loan/credit facility availed of by the bank. They submit that on the other FDRs that were obtained from the bank, such endorsements were there. They further submit that the signatures of the petitioner also appear on the backside of the FDR in question, thereby giving rise to a suspicion that the said FDR would have been encashed only on presentation under the authority of the petitioner. They submit that late Mr.J.S. Ahluwalia had resigned as a Director of the said Company sometime in the year 2008-09 and had no concern left with the Company. They submit that, therefore, the authority of the petitioner, if any, to present the said FDR for encashment of a loan facility availed from the bank stood closed.

15. I have considered the submissions of the learned counsels for the parties.

16. At the outset, I would remind myself of the parameters that govern the proceedings at the stage of framing of charge. At this stage,



the prosecution is not to prove its case beyond reasonable doubt but only on the yardstick of suspicion of a *prima facie* case being made out against the accused. It is not the stage to conduct mini trial.

17. In *State of Rajasthan v. Ashok Kumar Kashyap*, (2021) 11 SCC 191, the Supreme Court has held as under:

“11.1. In P. Vijayan v. State of Kerala, (2010) 2 SCC 398, this Court had an occasion to consider Section 227 CrPC. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11.2. In the recent decision of this Court in State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515, one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under:



“25. The High Court [M.R. Hiremath v. State, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held :

‘29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.’ ”

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14. *As rightly observed and held by the learned Special Judge at the stage of framing*



of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not.

15. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application.”

18. Recently, the Supreme Court in ***State of Gujarat v. Dilipsinh Kishorsinh Rao***, 2023 SCC OnLine SC 1294, has held 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.”

19. In the facts of the present case, it is evident that the FDR in question does not bear an endorsement that it is being produced before the bank as a lien or guarantee for the loan/credit facility availed by



the Company from the said bank. It is the case of the prosecution that other FDRs bear such an endorsement. The reason why the present FDR does not bear this endorsement can be determined once the parties lead their respective evidence before the learned Trial Court.

20. It is also the case of the prosecution that the FDR bears the signatures of the petitioner on the backside of the same. Though the learned counsel for the petitioner submits that the same was irrelevant as the said FDR could have been encashed even without the same, this again will be a disputed question of fact which can be determined by the learned Trial Court only on the appreciation of the evidence of the parties led before it.

21. In the present case, therefore, applying the above yardstick applicable to the stage of framing of charges, in my view no fault can be found in the Impugned Order.

22. In *Dr. Vimla* (supra), it was a case where proceeds had gone into the account of the person in whose favour the policy was taken. This, however, is not there in the facts of the present case. Admittedly, the amount has not gone to the account of Late Mr.J.S. Ahluwalia, but to the account of the Company of which he was no longer a Director.

23. In *Parminder Kaur* (supra), it was observed that the investigation by the Investigating Officer (in short, 'IO') therein had a number of loopholes and the IO lacked bona fides and had utterly misused his powers of investigation. The Supreme Court, in the facts of the said case, held that there was sufficient material to discharge the accused therein of the offence. The said judgment, therefore, cannot come to the aid of the petitioner.



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24. Accordingly, I find no merit in the present petition. The same is dismissed. The pending application is also disposed of as being rendered fructuous.

25. It is made clear that any observations made hereinabove in the present judgment shall in no manner influence the learned Trial Court during the adjudication of the proceedings pending before it.

NAVIN CHAWLA, J

MARCH 22, 2024/Arya/AS

Click here to check corrigendum, if any