



2024:DHC:2442



\$~63

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 27.03.2024***+ CRL.M.C. 4862/2022
M A SURESH

..... Petitioner

Through: Mr.Ranbir Singh,
Mr.Harshvardhan Sharma,
Mr.Neeraj Kumar, Mr.Rajesh
Sharma, Mr. D. Yudhishter,
Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Shoaib Haider, APP with
SI Rahul**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CRL.M.A. 9345/2024**

1. This application has been filed seeking early hearing of the petition.
2. With the consent of the learned APP, the petition is taken up for hearing today itself.
3. The application stands disposed of.
4. The next date of hearing before this Court, that is, 04.09.2024, stands cancelled.

CRL.M.C. 4862/2022

5. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') read with Article 227 of



2024 : DHC : 2442



the Constitution of India, challenging the order dated 02.08.2022 passed by the learned Additional Sessions Judge-06, New Delhi District, Patiala House Courts, New Delhi in Criminal Revision No.31/22, titled ***Sh. M.A. Suresh v. The State (Govt. of NCT of Delhi)***, dismissing the said Revision Petition.

6. The above Revision Petition was filed challenging the order dated 01.11.2021 passed by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi in Criminal Case No.48416/2016, titled ***State v. J Samimalai & Ors.***, whereby the learned Trial Court framed the charges *inter alia* against the petitioner herein for the offence punishable under Sections 408/409/477A/120B of the Indian Penal Code, 1860 (in short, 'IPC').

Factual Matrix

7. It is the case of the prosecution that the FIR No.74/2012 has been registered on the direction of the learned Additional Chief Metropolitan Magistrate under Section 156(3) of the Cr.P.C., on a complaint filed by the Secretary, Delhi Tamil Education Association (D.T.E.A), Lodhi Estate, New Delhi. In the complaint, it was stated that the petitioner herein was the Joint Secretary of the said Society from 2006 till 14.02.2010. On completion of the tenure, he alongwith the co-accused J.Samimalai, Secretary of the said Society, did not hand over the documents like Minutes Books belonging to the Complainant Society to the next Governing Body. They have also forged the Memorandum of Understanding dated 25.01.2010, whereby they sold the Maruti Omni car belonging to the Society for a sum of Rs.70,000/- to one Mr.R.Mohan Kumar; purchased, on behalf of the



Complainant Society, one second hand Maruti Wagon R car for a very high amount of Rs.4,21,000/- from the said co-accused Mr.R. Mohan Kumar. The car purchased was also hypothecated with ICICI Bank and the monthly instalments had not been paid by the accused Mr.R.Mohan Kumar; and that the car purchased was thereafter hypothecated to co-accused Mr.R.Mohan Kumar for a consideration of Rs. 1,50,000/-, in the name of expenses/fees for conducting the election in the society.

8. The prosecution further alleges the role of the petitioner as under:

“1. Petitioner MA Suresh along with other accused J Sami Malai has not handed back the minute's book to the new management of the DTEA society.

2. Petitioner MA Suresh along with other accused J. Samimalai & R. Mohan Kumar have done the illegal act of violating HP Agreement by purchasing the vehicle Maruti WagonR No DL-3C-AZ-1721 in the name of society while the vehicle was still under HP Agreement with ICICI Bank and could not be sold or purchased.

3. Petitioner MA Suresh along with other accused J Sami Malai mortgaged the vehicle Maruti Wagon R to accused R Mohan Kumar for Rs 1,50,000/- without the approval of Governing body of DTEA Society.

4. Petitioner MA Suresh along with other accused J Sami Malai has done misappropriation of Rs 75,000/- from the amount of Rs 1,50,000/- which they have received from R Mohan Kumar in the name of mortgaging vehicle Maruti Wagon R to him. They deposited only Rs 75,000/- in bank



2024 : DHC : 2442



account of DTEA Society.”

Submissions by the learned counsel for the petitioner

9. The learned counsel for the petitioner submits that the allegations against the petitioner are totally unfounded. He submits that the Minutes Books of the Society were in the possession of Mr.J.Samimalai, Secretary of the Society. He submits that there is no document produced by the prosecution which would show that these Minutes Books were ever in possession of the petitioner herein.

10. He submits that as far as the transaction of sale and purchase of the car is concerned, the MOU does not bear his signatures and therefore, he cannot be accused of having purchased the said car in violation of Hire-Purchase Agreement.

11. On the issue of mortgaging the said car, he submits that in the said transaction as well, the petitioner had no role to play.

12. He further submits that as far as the misappropriation of the amount is concerned, only a sum of Rs.1,05,000/- was handed over to the petitioner for being deposited with the bank. The said amount was duly deposited. Thereafter, two Demand Drafts of Rs.75,000/- each were prepared, which were handed over to the Returning Officer for the election in accordance with and in compliance with an order passed by the Competent Court.

13. He submits that therefore, the petitioner is being falsely accused in the above case and no material for framing of charge against the petitioner has been produced by the prosecution.



Submissions by the learned APP

14. The petition is opposed by the learned APP. He submits that the defence of the petitioner cannot be considered at this stage. He submits that there are grave charges against the petitioner of misappropriation of amount belonging to the Society.

Analysis and Finding

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

16. I must first be reminded of the yardstick which has to be adopted at the stage of framing of charges. 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 T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, advertent 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.' "

xxxxx

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.

xxxx

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 present case, as is evident from the above, the petitioner was the Joint Secretary of the Society till 2010. There are specific allegations with respect to the sale and purchase of the two vehicles, which do not *prima facie* inspire confidence in the transaction. There are also allegations of embezzlement of the amount that was received on the mortgaging of the vehicle to the accused, which was at the first instance purchased from him.

20. In my view, applying the above yardstick to the facts and circumstances of the present case, no fault can be found with the Impugned Order.

21. Accordingly, I find no merit in the present petition. The same is dismissed.

22. At this stage, the learned counsel for the petitioner submits that though the charges were framed by the order dated 01.11.2021, the trial has not progressed.



2024 : DHC : 2442



23. Keeping in view that the FIR is of 2012, the learned Trial Court is requested to expedite the trial.

NAVIN CHAWLA, J

MARCH 27, 2024/Arya/RP

Click here to check corrigendum, if any