



2024:DHC:5398



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 15th July, 2024*+ **CRL.REV.P. 888/2024****STATE**

.....Petitioner

Through: Mr. Naresh Kumar
Chahar, APP for the State

versus

SANTOSH & ORS.

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J (Oral)****CRL.M.A. 20300/2024 (delay)**

1. For the reasons stated in the application, the delay of 119 days in filing the present revision petition is condoned.
2. The application is disposed of.

CRL.M.A. 20301/2024 (exemption)

3. Exemption allowed, subject to all just exceptions.
4. The application stands disposed of.

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5. The present petition is filed assailing the order dated 16.09.2023, passed by the learned Additional Sessions Judge-04, North District, Rohini Court, Delhi (hereafter '**the impugned order**') and seeking framing of charge for offence punishable under Section 308/323/34 of the Indian Penal Code, 1860 (**IPC**)

in the case arising out of FIR No. 744/2014, registered at SP
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6. The FIR was registered on the complaint given by the complainant, namely, Vikas Rana who alleged that on 19.05.2014, an altercation took place between the complainant and Vikram (accused no. 1) due to non-repayment of the loan taken by accused no. 1 from the complainant. During the altercation, Rajnish/victim (cousin brother of the complainant) tried to intervene and protect the complainant but he was caught by accused no.1 and Pawan (accused no.2) who gave him severe beatings upon which Seema (accused no.5), Suman (accused no.6), Kavita (accused no.7), and Santosh (accused no.8) i.e., wife, sister in laws ('Bhabhis'), and mother of accused no.1 came out with a 'danda' and exhorted to the male members that "*laato ke kaam nahi raha ab aaj iss Vikas ke kaam pura kar do*" and handed over more 'dandas' to the accused persons.

7. It is alleged that accused nos.1 to 4 gave several blows to the complainant and Rajnish because of which blood started oozing out of the injuries caused by the attack. In an effort to protect themselves from the attack by the accused persons, the complainant and Rajnish tried to grapple with the attackers but were overpowered by their number and strength. In this retaliation, the opposite party also received some injuries.

8. The learned ASJ by the impugned order has framed charges against the accused persons namely - Vikram, Pawan, Chander Shekhar and Jaswant Rana for offences under Sections 308/323/34 of the IPC but has discharged Santosh, Kavita, Suman, and Seema ('the Respondents'). The learned ASJ noted

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that the parties have been involved in multiple litigations and multiple FIRs have been registered at the instance of the complainant as well as the accused persons against each other. The learned ASJ, in the impugned order, observed that the prosecution, despite filing the chargesheet, listed the respondents in Column No.12 of the chargesheet due to the absence of any incriminating evidence against them. The operative portion of the impugned order is set out below:

“From perusal of the record, it has been observed that the names of accused persons namely Santosh, Kavita, Suman and Seema have been mentioned in column no.12 of the charge-sheet and it has been mentioned in the charge-sheet by the IO that nothing incriminating against them has been found during the investigation of the present case. It is pertinent to mention that accused persons namely Santosh, Kavita, Suman and Seema were not summoned by Ld. MM concerned and they have been summoned vide order dated 22.03.2018 by my Ld. Predecessor Ms. Sukhwinder Kaur Ld. ASJ, North-District, Rohini Courts. Delhi.

It is not in dispute that an FIR bearing no. 517/2014 PS S P U/s 147/148/149/452/308 IPC has been registered on the complaint of accused Chander Shekar. On 21.05.2014 and the present FIR has been registered on 16.07.2014 (around two months later) at the directions of Ld. MM concerned on an application under section 156 (3) Cr.P.C., moved by complainant Sh. Vikas Rana. It is also not in dispute that in cross FIR bearing no.517/2014 PS S P Badli U/s 147/148/149/452/309 IPC, accused Santosh is one of the injured persons. Further, statements under Section 161 Cr.P.C., of Complainant Vikas Rana and other injured Rajnish Rana have been carefully perused, however, nothing incriminating against accused persons namely Santosh, Kavita, Suman and Seema has come in the said statements. Further, it is also important to mention that the IO has himself mentioned in the charge-sheet that there was no sufficient evidence against the accused persons namely Santosh, Kavita, Suman and Seema, therefore, their names have been mentioned in column no.12 of the charge-

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sheet.”

9. Aggrieved by the aforesaid order, the State has preferred the present petition.

10. The learned Additional Public Prosecutor for the State submits that the learned ASJ has committed an error by discharging the respondents of the alleged offence. He submits that specific allegations were made out against the accused persons/respondents, who allegedly, at the time of the incident, came out and gave a stick to the other accused persons and exhorted them.

11. I have perused the chargesheet and complaint.

12. Since the prosecution has assailed the impugned order discharging the respondents, 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



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Magistrate, I [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.”

13. 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. [Ref: **Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460**].

13. 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 paragraphs read 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

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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.



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(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)

14. In a recent decision in ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. : 2022 SCC OnLine SC 1057***, the Hon'ble Apex Court has explained the law on charge and held as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the

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entire prosecution evidence has come on record should not be entertained sans exceptional cases.

*22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. **At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt.** The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.*

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

15. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts *prima facie* constitute the alleged offence. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

16. It is relevant to note that specific allegations were made against the accused persons, who have been charged, however, only general allegations were made against the respondents. These allegations lack specificity, failing to clarify which respondent provided the stick to which male member.



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17. A general accusation was made that the respondents provided a *danda* to the male members who were involved in the altercation. Though, it is true that the conviction can be made on the basis of the sole statement of the victim or the complainant however, the same must inspire confidence. In order to frame charges the prosecution must show 'grave suspicion' against the accused persons as 'mere suspicion' is not sufficient. The vague nature of the statements given by the complainant and Rajnish Rana against the respondents, possibly seems to be influenced by ongoing legal disputes and multiple FIRs involving the parties. As observed by the learned ASJ, the prosecution did not seek further evidence against the respondents and filed the chargesheet.

18. 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.

19. It is a well settled principle that at the stage of the charge, the court must only be satisfied that a *prime facie* case has been made out against the accused person. Moreover, the Court must not interfere with the order unless it is in the interest of justice and to avoid abuse of the process of court leading to injustice. The object behind Section 397 of the CrPC is to set right a patent defect or an error of jurisdiction or law or any perversity that



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might have crept in the proceeding. In *Sajjan Kumar v. CBI* (*supra*), it was also observed 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.

20. This Court while exercising power under Section 397 of the CrPC is only required to satisfy itself about the correctness of the legality of the order passed by the inferior Court and is not to substitute the view that may be plausible.

21. In the present case, the learned ASJ has evidently applied his judicial mind and considered the totality of the facts before discharging the respondents of the offences punishable under Sections 308/323/34 of the IPC in light of absence of grave suspicion against the respondents. The learned ASJ opined that no *prima facie* case was made out against the respondents. In the impugned order, it was noted that the respondents were listed in column no.12 of the chargesheet, indicating that no incriminating evidence was found against them. The learned ASJ, upon perusal of the statements of the complainant and Rajnish Rana, rightly observed that nothing incriminating has been made out against the respondents.

22. In such circumstances, this Court is of the opinion that given the limited scope of interference under Section 397 of the CrPC, and that the impugned order is not plagued with any inherent perversity or patent illegality, no ground is made out to warrant any interference in the impugned order.

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23. Accordingly, the present petition is dismissed.

AMIT MAHAJAN, J

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