



2024:DHC:7787



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

Date of decision: 27th SEPTEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 5474/2024**

SHANTANU SHANDILYA

.....Petitioner

Through: Mr. Pradeep Teotia, Mr. Jayveer Singh and Mr. Vishesh Kumar, Advocates.

versus

STATE G.N.C.T OF DELHI AND ANR.

.....Respondents

Through: Ms. Priyanka Dalal, APP for the State.
SI Pankaj Kasana, PS Anand Vihar

+ **CRL.M.C. 5501/2024**

ANIL SHANDILYA

.....Petitioner

Through: Mr. Pradeep Teotia, Advocate.
versus

STATE G.N.C.T OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the State.
SI Pankaj Kasana, PS Anand Vihar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioners have approached this Court challenging the Order dated 03.09.2016, passed by the learned ACMM, Shahdara, Karkardooma Courts, in Crl. Revision No.242/2016, arising out of FIR No.212/2012, registered at Police Station Anand Vihar.



2024:DHC:7787



2. Since the Order under challenge in the present Petitions is common, both the Petitions are being disposed of by this common order.
3. The facts, leading to the present Petitions, are as follows:
 - a) Petitioner in CRL.M.C. 5474/2024, i.e. Shantanu Shandilya, is the son of Petitioner in CRL.M.C. 5501/2024, i.e. Anil Shandilya.
 - b) The present proceedings emanate from FIR No.212/2021, registered at Police Station Anand Vihar for offences under Sections 323/451/427/506/509 IPC.
 - c) The said FIR was registered on the complaint of Respondent No.2 herein who stated that Shops No.SG-458 & SG 48, at Plot No.9D, Aditya Mega Mall CBD, East Shahdara, Delhi, belong to the Complainant and are owned under the name and style of B.K. Gupta HUF. It is stated that two separate agreements to sale were entered into between the HUF and Anil Shandilya for sale of the abovementioned shops. It is stated that Anil Shandilya was not able to adhere to the terms of the agreement and he failed to make payments before the due date and later on filed a civil suit before this Court, being CS (OS) 1903/2012. It is stated in the complaint that as per the directions of this Court, Anil was supposed to deposit Rs.51.50 lakhs before 07.08.2012 towards full and final sale consideration of shop No.SG-48 and Rs.90 lakhs were to be deposited before 09.08.2012 towards full and final sale consideration of shop No.SG-458. It is stated that on 06.08.2012, when the complainant was standing in the shop supervising the construction of a wall for division of both



2024:DHC:7787



the shops, Anil and Shantanu along with two other persons came there and started abusing and threatening the Complainant. It is stated that the complainant was pushed by the accused persons because of which her head hit the wall and she fell down. It is stated that the wall that was being constructed by the Complainant was demolished. It is stated that Anil started abusing the Complainant using filthy language and threatened the Complainant with dire consequences.

- d) After completion of investigation, charge-sheet has been filed against the Petitioners for offences under Sections 323/352/451/427/509/506(Part 1)/34 IPC.
- e) Vide Order dated 03.09.2016, charges were framed against the Petitioners for offences under Sections 323/352/451/427/509/506(Part 1)/34 IPC.
- f) The said Order was challenged by the Petitioners by filing a Revision Petition. The Revisional Court *vide* Order dated 09.03.2017 discharged Shantanu Shandilya of all the offences while Anil Shandilya was discharged of offences under Sections 451/509 IPC.
- g) The said Order was challenged by the Complainant by filing CRL.M.C. 5078/2017 before this Court contending that she has not been heard before passing the Order discharging the Petitioners herein. This Court *vide* Order dated 24.07.2019 set aside the Order passed by the Revisional Court and remanded the matter back to the Revisional Court.
- h) The Revisional Court, on fresh consideration of material on



2024:DHC:7787



record, dismissed the Revision Petition, meaning thereby, both Petitioners have now been charged for offences under Section 323, 352, 451, 427, 509, 506 IPC.

i) It is this Order which is under challenge in the present Petitions.

4. Learned Counsel appearing for Shantanu Shandilya has raised a plea of alibi. He states that Shantanu was not present at the site when the incident in question took place as he was attending his coaching classes at Patanjali IAS Classes. He states that the Investigating Officer has recorded the statement of the friends of Shantanu but that same has been ignored by the Courts below. Learned Counsel for the Petitioner draws the attention of this Court to the charge-sheet and state that the class timings of Shantanu are from 05:30 PM to 08:00 PM.

5. Learned Counsel appearing for Anil Shandilya states that there is no detailed discussion in the Order framing charges or in the Order dated passed by the Revisional Court as to how the ingredients of each of the offences alleged against the Petitioners are made out. He also states that the Court cannot act as a mouthpiece of the Prosecution.

6. *Per contra*, learned APP appearing for the State submits that while framing charges a detailed discussion on merits need not take place and there is nothing to disbelieve the version of the Complainant.

7. Heard the learned Counsels for the parties and perused the material on record.

8. The law laid down by the Apex Court on the scope of inquiry while dealing with an application under Section 227 Cr.P.C. has been succinctly laid down by the Apex Court in Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4, wherein the Apex has held as under:



2024:DHC:7787



“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

9. In State of Bihar v. Ramesh Singh, (1977) 4 SCC 39, the Apex Court has held as under:



2024:DHC:7787



“4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If “the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”, as enjoined by Section 227. If, on the other hand, “the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused”, as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take



2024:DHC:7787



the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”

10. In Sajjan Kumar v. CBI, (2010) 9 SCC 368, the Apex Court has observed as under:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:



2024:DHC:7787



(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.



2024:DHC:7787



(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.”

11. After relying on various judgments of the Apex Court on this point, the Apex Court in Tarun Jit Tejpal v. State of Goa, (2020) 17 SCC 556, has held as under:

“8.3. In Mauvin Godinho [Mauvin Godinho v. State of Goa, (2018) 3 SCC 358 : (2018) 2 SCC (Cri) 63 : (2018) 1 SCC (L&S) 591] this Court had an occasion to consider how to determine prima facie case while framing the charge under Sections 227/228 CrPC. In the same decision this Court observed and held that while considering the prima facie case at the stage of framing of the charge under Section 227 CrPC 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.

8.4. At this stage the decision of this Court in Stree Atyachar Virodhi Parishad [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] is also required to be referred to. In that aforesaid decision this Court had



2024:DHC:7787



an occasion to consider the scope of enquiry at the stage of deciding the matter under Sections 227/228 CrPC. In paras 11 to 14 observations of this Court in the aforesaid decision are as under : (SCC pp. 719-21)

“11. Section 227 of the Code of Criminal Procedure having bearing on the contentions urged for the parties, provides:

‘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 no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.’

12. Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject-matter of consideration by this Court. In State of Bihar v. Ramesh Singh [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] , Untwalia, J., while explaining the scope of the said sections observed : [SCC pp. 41-42, para 4 : SCC (Cri) pp. 535-36 : SCR p. 259]

‘4. ... Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the



2024:DHC:7787



accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.'

13. In Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Fazal Ali, J., summarised some of the principles : [SCC p. 9, para 10 : SCC (Cri) pp. 613-14 : SCR pp. 234-35]

'(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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 had been made out.



2024:DHC:7787



(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

14. These two decisions do not lay down different principles. Prafulla Kumar case [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] has only reiterated what has been stated in Ramesh Singh case [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] . In fact, Section 227 itself contains enough



2024:DHC:7787



guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused'. The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

8.5. Applying the law laid down by this Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Sections 227/228 CrPC, we are of the opinion that the submissions made by the learned counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for



2024:DHC:7787



which he is required to be tried. There is sufficient ample material against the accused and therefore the learned trial court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for.”

12. Applying the law laid down by the Apex Court, this Court is of the opinion that the defence of alibi need not be taken up at this juncture.

13. A perusal of the charge-sheet reveals that Shantanu used to attend coaching classes at Patanjali IAS Centre. The statement does not reflect that on the date of the incident, Shantanu was at the coaching centre. In any event, it is the categorical case of the Complainant that Shantanu was with Anil on the day of the incident and they both were instrumental in hitting the Complainant causing injury to her. In any case, the plea of *alibi* would be taken at the time of trial.

14. This Court is of the opinion that the Complainant, who is a lady, has suffered injuries. The Complainant has categorically stated that she was threatened with dire consequences. The property in question belongs to HUF of the Complainant and the property has been trespassed by the Petitioners herein. The wall has also been demolished by the Petitioners. In view of the above, offences under Sections 323/352/451/427/509/506(Part 1)/34 IPC are prima facie made out against the Petitioners herein.

15. Material on record also discloses that Suits have also been filed by the accused Anil Shandilya regarding the property in question and the directions of a co-ordinate Bench of this Court directing the Petitioner to deposit money has not been complied with. The Suits have been dismissed for non-prosecution.



2024:DHC:7787



16. In view of the above, the case of the Complainant cannot be said to be completely unbelievable.

17. This Court is, therefore, not inclined to interfere with the Order impugned herein.

18. The petitions are accordingly dismissed along with pending application(s), if any.

19. Trial Court is directed to proceed in accordance with law.

SUBRAMONIUM PRASAD, J

SEPTEMBER 27, 2024

Rahul