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

+ CRL.REV.P. 1177/2023, CRL.M.A. 29953/2023,
CRL.M.A. 29955/2023

SHER MOHDPetitioner
Through: Mr. Vishal Gera and Ms.
Shagufta Yasmin,
Advocates along with
petitioner in person.

versus

STATE GOVT. OF NCT OF DELHI
AND ANR.Respondents
Through: Mr. Manoj Pant, APP for
the State with Insp. Manoj
Verma (SHO) Wazirabad.
Mr. Vineet Jain,
Advocates for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
20.11.2024

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1. The petitioner challenges the order dated 12.05.2023 to the extent that the accused persons/ Respondent Nos. 2 and 3 have not been charged for the offence punishable under Section 27 of The Arms Act, 1959 (hereafter '**Arms Act**').
2. The learned Trial Court has passed a formal order on charge, noting that in furtherance of the common intention, the accused persons have committed murder of one– Shiraz by shooting him dead and thereby committed the offences punishable under Sections 302/34 of the Indian Penal Code, 1860.
3. Concededly, the victim died of a gun shot injury. The learned counsel appearing on behalf of Respondent Nos. 2 and 3 does not have any serious objection with regard to the arguments



raised by the learned counsel for the petitioner.

4. Section 27 of the Arms Act states as under:

“27. Punishment for using arms, etc.—(1) Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, 2 [shall be punishable with imprisonment for life, or death and shall also be liable to fine.”

5. The formal order on charge has not been challenged by the accused persons and they have pleaded not guilty and claimed trial. The allegation against Respondent Nos. 2 and 3, at this stage, undisputedly is that they have committed the murder of the victim by shooting him dead.

6. The learned counsel for Respondent Nos. 2 and 3, however, submits that there is no evidence that Respondent Nos. 2 and 3 have ever used any arms for the commission of the alleged offence.

7. The charges have already been framed stating that the accused persons had committed the murder by shooting the victim. The charge necessarily has also to be framed under Section 27 of the Arms Act.

8. The learned Trial Court noting that no incriminating evidence has been brought on record with regard to commission of the offence under Section 27 of the Arms Act, has not framed charges under the Arms Act. The observation made by the learned Trial Court in the opinion of this Court is erroneous.

9. The non-recovery of the weapon itself cannot be fatal at



the stage of framing of charge when concededly the victim has died of a gun-shot and the charges framed also notes that the accused persons have been charged for committing of murder of the victim by shooting him dead.

10. In view of the above, the present petition is allowed. The order dated 12.05.2023 is set aside.

11. The learned Trial Court is directed to pass a fresh order on charge, in terms of the observations made in the present petition. Pending applications also stand disposed of.

AMIT MAHAJAN, J

NOVEMBER 20, 2024

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