



2024:DHC:4810



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

Reserved on: 25.04.2024

Pronounced on: 01.07.2024

+ **CRL.M.C. 6424/2022 & CRL.M.A. 25064/2022**

INDER SINGH SOLANKI

..... Petitioner

Through: Mr.Ramesh Gupta, Sr. Adv.
with Mr.Shailendra Singh,
Mr.Harsh Choudhary,
Mr.Ishaan Jain, Advs.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr.Aman Usman, APP with SI
Vikram.
Mr.Ayaz Ahmed, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

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 29.10.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-07, Patiala House Courts, New Delhi (hereinafter referred to as the 'ASJ') in Criminal Appeal No.87/2022 titled as *State (Govt. of NCT of Delhi) v. Inder Singh Solanki*. As recorded by the learned ASJ in the Impugned Order, it was, in fact, a revision petition and not an appeal.

2. The said revision petition was filed by the State challenging the order on charge dated 05.04.2022, passed by the learned Metropolitan



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Magistrate, Patiala House Court, Delhi (hereinafter referred to as the 'Trial Court') in CC No.786/2022 titled as *State v. Inder Singh Solanki*, arising out of the FIR No.95/2021 registered at Police Station: Sagarpur, South-West District, Delhi for offence under Sections 336/506 of the Indian Penal Code, 1860 (in short, 'IPC') and Section 30 of the Arms Act, 1959 (in short, 'Arms Act'), whereby the learned Trial Court had discharged the petitioner herein for offence punishable under Section 30 of the Arms Act, however, had proceeded to direct the framing of charge against the petitioner under Sections 336/506 of the IPC.

3. By the Impugned Order, the learned ASJ has allowed the revision petition filed by the State and directed the learned Trial Court to frame charge against the petitioner also under Section 30 of the Arms Act.

4. The petitioner being aggrieved of the said order has filed the present petition.

Factual background

5. The above FIR was registered on the allegations that on 26.02.2021, at around 11 AM, the respondent no.2 / complainant came out of his house and saw that there was a gas pipeline work going on outside his house and the petitioner was obstructing the workers from doing the same. When the complainant tried to intervene, a quarrel between the complainant and the petitioner took place. The petitioner then took out his licensed revolver from the bag and pointed it at the complainant and threatened to kill him. The respondent no.2 called the



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police by dialing at 100 number, informing of the immediate life threat made by the petitioner. The police personnel, upon receiving such information, reached at the spot of the incident and snatched the licensed revolver from the petitioner and seized the same.

Submissions of the learned Senior Counsel for the Petitioner

6. The learned senior counsel for the petitioner submits that, in fact, the FIR and the consequent proceedings are itself liable to be quashed. He submits that there are material discrepancies in the timing of the General Diary Entry, being GD No.0036A dated 26.02.2021, which was recorded at 10:29:13 hours, recording the information of the petitioner allegedly threatening the caller with a pistol; FIR registered at 7:25 p.m. and stating that the time of offence was 10:00 hours; and the Case Diary recording the statement of ASI Rajpal under Section 161 of the Cr.P.C., wherein he states that on assignment of the DD No.36 referred hereinabove, he reached the spot of the incident and still found the petitioner to be pointing the Revolver towards the complainant threatening him to kill him.

7. The learned senior counsel for the petitioner submits that it is not possible that though the time of offence as mentioned in the FIR is 10.00 AM, the call regarding the same would be made only on 10:29 AM, and even when the police personnel responds to the call and reaches at the spot of incident, the petitioner is still found to be pointing the gun at the complainant and threatening him. He submits that a false case has been concocted against the petitioner.



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8. He further submits that it is the case of the prosecution that the work in relation to laying out of gas pipeline outside the house of the petitioner was being carried out, however, no independent witness of the incident, that is, the workers have been cited as witness.

9. The learned senior counsel for the petitioner submits that there is a previous history of litigations between the petitioner and the father of the complainant, and the subject FIR is a result of this enmity between the parties.

10. Placing reliance on the judgment of the Supreme Court in **Salib v. State of U.P.**, 2023 SCC OnLine SC 947, he submits that where there is a previous history of litigation and an FIR is registered for wreaking personal vengeance, the Court should be more cautious in examining and relying on the contents thereof, and while exercising its powers under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India, the Court should not restrict itself but should quash the frivolous or vexatious prosecution instituted with the ulterior motive of wreaking vengeance.

11. He submits that the prosecution places reliance on a CD which contains the alleged video recordings of the incident dated 26.06.2021, that is claimed to have been handed over by the complainant to the Investigating Officer (IO), however, there is no statement of any witness to the fact as to who had made the said video recording. He submits that the above CD was kept in a yellow cover, however, was not sealed. He submits that there is no mention of the said CD to have been sent to the FSL in order to establish the authenticity of the said video recording. He submits that, in fact, the IO himself also has not



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even seen the said video as it was sealed without seeing the same. He submits that the original source of the video recording in the CD could not be established / seized by the IO. He submits that therefore, no reliance can be placed on the said CD / Video recording. In support of his submission, he places reliance on the judgement of the Supreme Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123.

12. He submits that neither in the Impugned Order passed by the learned ASJ nor even in the order on charge passed by the learned Trial Court, there is any mention of the alleged CD relied upon by the prosecution.

13. He submits that even otherwise, offence under Section 30 of the Arms Act is not made out against the petitioner as the petitioner is alleged to have only pointed his licensed gun towards the complainant / respondent no.2 while being in his own property. He submits that the same cannot be said to be 'brandishing' a firearm at a public place. He submits that it is not even the case of the prosecution that the petitioner was 'brandishing' his licensed revolver. He submits that the learned ASJ, without any evidence on record to support the same, has wrongly observed that the petitioner has violated the provision of Section 32(3) of the Arms Rules, 2016 (in short, 'Arms Rules').

14. He submits that at the stage of framing of charges, the Trial Court is to evaluate the material brought before it for the limited purpose of finding out whether the offence is made out or not against the accused. The allegations made cannot be treated as gospel truth. In support of his above submission, he places reliance on the judgement



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of the Supreme Court in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76.

15. The learned senior counsel for the petitioner submits that Section 336 of the IPC cannot be invoked to the facts of the present case. He submits that it is alleged that it was a conscious act of the petitioner that he pointed his licensed gun towards the complainant and therefore, the same cannot be termed as a rash and negligent act. In support of his contention, he places reliance on the judgment of the High Court of Judicature at Bombay in *Kala Bhika Baria v. State of Maharashtra*, 1964 SCC OnLine Bom 54.

16. Regarding the learned Trial Court framing charge under Section 506 of the IPC, he submits that the same is liable to be set aside as threat under Section 506 of the IPC has to be coupled with its consequences also to show that the alarm has been caused on the person so being threatened. He submits that in the present case, it is the case of the prosecution that as soon as the petitioner pointed the revolver towards the complainant, the complainant called the police by dialing 100 number, therefore, there was no alarm caused to the complainant and the charge under Section 506 of the IPC deserves to be set aside.

Submissions of the learned APP

17. On the other hand, the learned APP points out that against the order of framing charge under Sections 336/506 of the IPC passed by the learned Trial Court, the petitioner filed no challenge. It was only the State which filed the revision petition challenging the order passed



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by the learned Trial Court insofar as it had discharged the petitioner of the offence under Section 30 of the Arms Act. He submits that therefore, the present petition, insofar as it challenges the order framing charge under Section 336/506 of the IPC is concerned, is not maintainable.

18. He further submits that the alleged discrepancies pointed out by the learned senior counsel for the petitioner would be looked into by the learned Trial Court during the Trial. However, at the present stage, with the video recording and Revolver having been recovered from the petitioner, there is enough material for a *prima facie* opinion that the trial should proceed against the petitioner on all charges that is, under Sections 336/506 of the IPC and under Section 30 of the Arms Act.

19. He also places reliance on the video which has been made part of the charge sheet and which reflects the petitioner brandishing the Revolver before being overpowered by the police officials. He submits that the statements of the witnesses are not to be minutely examined by the Court at this stage.

20. He submits that merely because there is a history of litigation between the petitioner and the complainant/his father, it is no ground to quash the charges against the petitioner. In support of the above, he places reliance on the judgements of the Supreme Court in ***State of Rajasthan v. Ashok Kumar Kashyap***, (2021) 11 SCC 191; ***Veena Mittal v. State of Uttar Pradesh***, in Criminal Appeal No.122 of 2022 decided on 24.01.2022; ***Ramveer Upadhyay v. State of U.P.***, 2022



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SCC OnLine SC 484; and, **CBI v. Aryan Singh**, 2023 SCC OnLine SC 379.

21. He places reliance on the judgment of this court in **Sanjay Kumar Pundeer v. State of NCT of Delhi**, Neutral Citation No.2023:DHC:6683, to submit that in the present case, Charge Sheet has been filed on completion of the investigation and after the IO has found enough / sufficient evidence to prosecute the accused / petitioner. He submits that the FSL report or any other scientific examination would only be corroborative in nature to the material collected by the IO and need not be filed along with the Charge Sheet, but can also be filed as a Supplementary Charge-sheet.

Analysis & Findings

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

23. I would first remind myself of the test to be applied at the stage of framing of the charge. At this stage, the detailed analysis of the evidence is not to be carried out by the Court. The only test to be applied is whether there is *prima facie* case made out by the prosecution to proceed against the accused.

24. As the Supreme Court has held in its judgment in **State of Gujarat v. Dilipsinh Kishorsinh Rao**, 2023 SCC OnLine SC 1294, that what is required while considering framing of charge and discharge is only the satisfaction of the court as to whether a *prima facie* case is made out against the accused to stand trial with the material available. The court has to proceed on an assumption that the



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material placed by the prosecution is true. The court is not expected to go deep into the matter and hold that the material would not warrant a conviction. The law does not permit a mini-trial at this stage. I may quote from the judgment 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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10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the



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existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709 advertent to the earlier propositions of law laid down on this subject has held:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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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11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

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.”

25. In the present case, the learned Trial Court discharged the petitioner of the offence under Section 30 of the Arms Act, while framing charge against the petitioner under Sections 336 and 506 of the IPC, by observing as under:-

“Admittedly, accused is a holder of a licensed firearm and at the date of incident, he had a subsisting licence which was valid upto 06.12.2021, Prosecution story is that an



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argument took place between the complainant and the accused and accused waived his licensed revolver at the complainant and threatened to kill him, on the basis of which charges of criminal intimidation and misuse of firearm have been laid against the accused. From a cursory perusal of the video footage provided by the complainant which has been filed with requisite Certificate under Evidence Act and which is made part of the Chargesheet, it can be heard that someone was inciting the accused by using provocative words. In the presence of police officials, while the video of the accused was being recorded, accused took out the firearm from his bag and waived it around and also threatened to fire the same. It can sufficiently be inferred that the accused would've caused alarm to any right thinking person who was present at the place of incident and the act was done in a negligent manner endangering life and personal safety of those present around the accused.

Hence, on the basis of the discussion made in the foregoing paragraphs and under the circumstances, charge against the accused for having committed offence u/s 30 Arms Act is not made out as it has not been explained in the chargesheet as to how accused has misused his arms license. However, charges u/s 336 and 506 IPC are made out against the accused and accordingly, separately charges u/s 336 and 506 IPC have been framed against the accused to which he has pleaded not guilty and claimed trial."

26. The learned ASJ, by the Impugned Order, allowed the revision petition of the State, observing as under:-

"10. In case, the Ld. Trial Court was of the view that the respondent/ accused threatened the complainant with his licensed revolver and



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he also endangered life and personal safety of others so as to charge him under Section 336/506 IPC, I am failed to understand how the Ld. Trial Court came to the conclusion that there is nothing in the charge-sheet to show that respondent/accused misused the licensed revolver. I am failed to understand how the Ld. Trial Court conceived that threatening a person in the public with the licensed revolver and endangering the life and personal safety of the other with the licensed revolver is not the misuse of the licensed revolver.

11. As per the statement of the complainant, when he asked the workers to continue the work stating that it is on a government land and on the land of respondent/ accused, the respondent/ accused lost his temper, took out his licensed revolver and threatened the complainant to kill him. Therefore, the respondent/ accused brandished his licensed revolver in public and also threatened the complainant with his licensed revolver. Prima facie, the respondent accused violated the provision of Rule 32(3) of the Arms Rule, 2016 and prima facie committed offence punishable u/s 30 of Arms Act.”

27. I do not find any reason to interfere with the above finding and direction of the learned ASJ. The learned Trial Court, while framing charge against the petitioner under Sections 336/506 of the IPC has itself observed in its order that from the video recording provided by the Complainant/respondent no.2 along with the requisite certificate under the Indian Evidence Act, 1872 (in short, ‘Evidence Act’), it is evident that the petitioner took out the firearm from his bag and waived it around and also threatened to fire the same. The learned Trial Court further observed that this act of the petitioner would have



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caused alarm to any right-thinking person who was present at the place of incident and the act was done in a negligent manner endangering life and personal safety of those present around the petitioner. Having held so, the learned Trial Court, however, committed a grave error on record in observing that still there is no misuse of the arms licence and therefore, no charge against the petitioner for offence under Section 30 of the Arms Act is made out. This error has rightly been corrected by the learned ASJ in the Impugned Order.

28. Section 30 of the Arms Act reads as under:-

“30. Punishment for contravention of licence or rule.—Whoever contravenes any condition of a licence or any provision of this Act or any rule made thereunder, for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to [six months], or with fine which may extend to [two thousand] rupees, or with both.”

29. A contravention of any Arms Rules, for which no punishment is provided elsewhere in the Arms Act, is itself a punishable offence under Section 30 of the Arms Act.

30. Rule 32(3) of the Rules reads as under:

“32.Restrictions on carrying of firearm in public place.—

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(3) Brandishing or discharge of firearms or blank-firing firearms in any public place or a firearm free zone is strictly prohibited.”



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31. A reading of the above Rule shows that '*brandishing*' of a firearm in any public place is strictly prohibited. Therefore, by brandishing his firearm in open public and in front of public personnel, the petitioner violated the said Rule. Charge under Section 30 of the Arms Act is, therefore, rightly directed to be framed against him.

32. The submission of the learned senior counsel for the petitioner that there is a discrepancy in the time of recording of the GD Entry, the FIR and the time of incident, are matters that shall have to be explained in evidence by the prosecution. However, at present, they are not considered sufficient to discard the case of the prosecution and to discharge the petitioner, especially in presence of a video recording which shows the petitioner to be brandishing his revolver in a threatening manner. The minor discrepancies in the material evidence or the other factual aspects of the case including the defence which is sought to be set up on behalf of the petitioner / accused, cannot be considered at this stage of the proceedings where only the test of a *prima facie* case has to be applied.

33. The plea of the petitioner that there is no FSL report on the authenticity of the video footage or its safe custody, are also all matters of trial. At the stage of framing of charge/considering an application of the accused seeking discharge, the Court is not expected to hold a mini-trial. While the Trial Courts may sift through the evidence, it is not to consider the veracity or otherwise of the evidence. A meticulous examination of the evidence is not to be done to consider whether the case would end in conviction or not at the



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stage of framing of charge. Reference in this regard can be made to the judgment of the Supreme Court in **Ashok Kumar Kashyap** (supra).

34. The judgment of the Supreme Court in **Sanjaysinh Ramarao Chavan** (supra) cannot also come to the aid of the petitioner as in the said case, the alleged voice recording relied upon by the prosecution itself was not audible. The prosecution was placing reliance on the alleged translated version of the audio recording. The Supreme Court held that the source and authenticity were itself doubtful. In the present case, the video footage is clear; its authenticity and admissibility shall have to be considered by the learned Trial Court at the trial.

35. The plea of the petitioner that the complaint is motivated with *mala fide* of the respondent no. 2 / complainant due to the past litigations between the petitioner and the father of the respondent no. 2 / complainant, also cannot be a ground to brush aside the case of the prosecution and to discharge the accused. While it is no doubt true that where the complaint appears to have been made out of personal vengeance or animosity, the Court should be more vigilant to look into the attending circumstances emerging from the record of the case, over and above the averments in the complaint [Refer: **Salib** (supra)], at the same time, merely because there may be a possibility of a complaint having been lodged only due to animosity, the FIR cannot be quashed or the accused discharged, if otherwise the ingredients of the offence are made out. [Refer: **Ramveer Upadhyay** (supra)]. In the present case, as noted hereinabove, there is *prima facie* material to proceed against the petitioner for offence under Section 30 of the



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Arms Act.

36. As far as the challenge of the learned senior counsel for the petitioner against the charge of offence under Sections 336 and 506 of the IPC being framed against the petitioner is concerned, I may only note that the petitioner did not challenge the order of the learned Trial Court before the learned ASJ. This itself may be sufficient for this Court to refuse to exercise its jurisdiction under Section 482 of the Cr.P.C. That apart, even otherwise, I find no infirmity in the order of the learned Trial Court in directing framing of charge under Sections 336 and 506 of the IPC against the petitioner.

37. Section 336 of the IPC reads as under:

"336. Act endangering life or personal safety of others.—Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees, or with both."

38. In the present case, the petitioner is accused of brandishing a firearm in public. A total of six live cartridges are also alleged to have been seized from him. Therefore, a *prima facie* case for committing offence under Section 336 of the IPC is made out against him.

39. Section 503 of the IPC defines '*criminal intimidation*' as under:-

"503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that



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person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

40. Section 506 of the IPC prescribes the punishment for the offence of ‘*criminal intimidation*’. It reads as under:

“506. Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

41. The petitioner is alleged to have brandished a firearm and threatened the complainant and the workers who were working on government work of laying a gas pipeline. The *prima facie* offence of Section 503 read with Section 506 of the IPC was therefore, made out against the petitioner and charge has rightly been directed to be framed against him.

42. For the above stated reasons, I find no merit in the present



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petition. The same, along with pending application, is dismissed.

43. I may, however, clarify that no observation made in the present order shall, in any manner, influence the learned Trial Court in the conduct of the trial.

NAVIN CHAWLA, J

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Click here to check corrigendum, if any

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