



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

% Reserved on :01.08.2024
Pronounced on :05.11.2024

+ **CRL.REV.P. 988/2024, CRL.M.A. 22608/2024 and**
CRL.M.A. 22609/2024

ABDUL KHALID SAIFI @ KHALID SAIFIPetitioner
 Through: Ms.Rebecca M. John, Sr. Advocate
 with Ms.Anushka B., Advocate

versus

STATE GOVT OF NCT OF DELHIRespondent
 Through: Mr. Sanjeev Sabharwal, APP for State
 with SI Sonu Kumar

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petition, the petitioner seeks to assail the order dated 29.04.2024 passed by the learned ASJ, Shahdara, Karkardooma Courts, New Delhi, whereby the charges were framed against the petitioner as well as the order on charge dated 19.01.2024 passed by Special judge, PC Act, Rouse Avenue District Courts, New Delhi arising out of FIR No. 44/2020, PS Jagatpuri registered under Sections 147, 148, 149, 186, 188, 332, 353, 307, 109, 120B, 34 IPC and 25, 27 of the Arms Act.
2. As discernible from the record, the present FIR pertains to protests that took place at Khajuri Khas, New Delhi with regard to the Citizenship (Amendment) Act, 2019. It is alleged that in order to maintain law and order, a flag march was conducted in the area on 26.02.2020 where the



police party urged the crowd to disburse as Section 144 Cr.P.C was directed to be imposed as a result of which, any form of assembly in the area was deemed to be illegal. It is alleged that the petitioner had abetted the crowd to disobey the orders of the police authorities and even urged the crowd to pelt stones at the police party. An incident of firing also took place. Subsequently, to control the situation, the police fired tear gas and the petitioner was apprehended on the same day.

3. Learned Senior Counsel for the Revisionist has urged that the impugned orders are in complete violation of established law. While contesting framing of charge under Section 307 IPC, it is contended that the same cannot be survived in the absence of any intention to commit culpable homicide amounting to murder. For a charge under Section 307 to stand, the prosecution ought to establish that the intention of the accused while causing injury fell into the categories specified under Section 300 IPC. Reliance in this regard has been placed on Sarju Prasad v. State of Bihar, reported as **AIR 1965 SC 843**. Reference has also been made to the order on charge wherein the charges under the Arms Act have been dropped against the accused persons as the firearm used was possessed by the juvenile, who was subsequently acquitted. It is further urged that for Section 149 IPC, the prosecution has to firstly establish that the Revisionist shared a common object and was part of unlawful assembly and secondly, that he was aware of the offences likely to be committed is to achieve the said common object, however no such evidence was produced or addressed while passing the impugned orders.

As regards to the charges under Sections 147, 148, 149, 186, 188, 332 and 353 IPC, it is urged that the same cannot sustain, as no material, in the



form of CCTV or other substantive evidence, was brought on record to show that the Revisionist was even present at the site of the incident, let alone that he obstructed any police personnel in the discharge of his public duty. It is argued that the statements of the witnesses relied upon by the prosecution are vague and are devoid of any specific allegations against the present petitioner.

Lastly, it is also argued that the Trial Court has failed to consider that the Revisionist was subjected to custodial torture at the hands of police officials and a direction had been given by the Ld. Duty Magistrate on 26.02.2020 to the concerned ACP to conduct an enquiry into the matter, however till date, no such enquiry has been conducted.

4. Ld. APP for the State, on the other hand, has defended the impugned orders and has stated that the Revisionist actively participated in instigating the crowd to pelt stones and open fire at the police. He also argued that the CCL, from whose possession the said firearm was recovered, disclosed that the said firearm was provided to him by the petitioner, who even instigated the CCL to fire the same.

5. I have heard the learned Counsels for the parties and have perused the material which has come on record.

6. The legal position concerning the revisional jurisdiction of the High Court against an order passed by the Trial Court is well settled and no longer *res integra*. This Court in a revision is not supposed to exercise the jurisdiction like an Appellate Court and the scope of interference is extremely narrow. This Court in a revision petition is only concerned with the correctness, legality, or propriety of any finding or order passed by the Trial Court; it should only interfere where there is any patent illegality or



defect or there is an error of jurisdiction or law and there has to be a well-founded error. Reference in this regard can be made to the decisions of the Supreme Court in Malkeet Singh Gill v. State of Chattisgarh, (2022) 8 SCC 204 and Suresh v. State of Maharashtra, (2001) 3 SCC 703.

7. A perusal of the impugned orders would show that the same have been passed primarily relying upon the statements of three public witnesses namely *Sharad Pandey*, *Aditya Swaroop* and *Mukesh Kaushik*. At this juncture, the Court deems it apposite to refer to the statements of *Mukesh Kaushik* recorded under Sections 161 Cr.P.C and 164 Cr.P.C . A careful perusal of the statement under Section 161 Cr.P.C. would show that *Mukesh* has categorically mentioned the presence of the Revisionist at the spot who instigated the crowd to pelt stones at the police. In his statement recorded under Section 164 Cr.P.C, the witness completely supported his previous statement. The statement of *Aditya Swaroop* recorded under Section 161 Cr.P.C is cumulative to the statements of *Mukesh*. He stated that on 26.02.2020, the Revisionist was present amongst the protesting crowd and that he instructed the protestors to disobey the orders of the police and pelt stones. While the public witness *Sharad Pandey* does not specifically mention the Revisionist's name, however he too in his 161 Cr.P.C statement mentioned about the presence of co-accused *Ishrat Jahan* and stated that “*apne saathiyon ke sath bheed ko uksa rahi thi*”.

Additionally, *Head Ct. Yograj*, who was present at the site on the day of the incident, has categorically stated in his 161 Cr.P.C statement about the presence of the accused at the spot and attributed the Revisionist with the role of agitating the protestors to turn violent.



8. The Supreme Court in the case of Amit Kapoor v. Ramesh Chander reported as **(2012) 9 SCC 460** highlighted the factors to be considered at the time of determining the point of charge. It observed that the governing court ought to take into account the case record in order to determine if there are sufficient grounds for believing that the accused had committed the offence. One must see if the essential elements constituting the offence are present or discernible from the case record. The Apex Court added that when exercising revisional or inherent jurisdiction to quash a charge, the test which is to be followed by the court is limited to whether the allegations, as made from the record of the case, taken at their highest, are patently absurd and whether the basic ingredients of the offence, for which the charge is framed, are not made out.

9. When assessing whether an offence committed falls under the provisions of Section 307 IPC, as per settled law, it is for the Court to look at the seat of the injury, the nature of the weapons used and the severity with which the blows were inflicted.

10. In the case of The State of Madhya Pradesh v. Kanha @ Om Prakash reported as **(2019) 3 SCC 605**, while considering its earlier decisions in Jage Ram (Supra) and Saleem (Supra) the Supreme Court had observed that :-

“10. Several judgements of this Court have interpreted Section 307 of the Penal Code. In State of Maharashtra v Balram Bama Patil reported as (1983) 2 SCC 28, this Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted:

“9...To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other



circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.” (Emphasis supplied)

This position in law was followed by subsequent benches of this Court.

11. In State of M P v Saleem reported as (2005) 5 SCC 554, this Court held thus:

“13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.”

12. In Jage Ram v State of Haryana reported as (2015) 11 SCC 366, this Court held that to establish the commission of an offence under Section 307, it is not essential that a fatal injury capable of causing death should have been inflicted:

“12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution



witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

13. The above judgements of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.”

11. In the present facts, this Court on a *prima facie* reading of the material on record finds that the presence and role of the Revisionist has been stated by the public persons and the police official. The protests led to one Ct. Vinod sustaining injuries. A gunshot was fired and the said firearm was even recovered from a CCL who disclosed that the same was provided to him by the Revisionist, who had instructed him to fire upon the police. The identity of the Revisionist is not in dispute. In light of the above-noted facts, this Court finds no ground to interfere with the impugned orders of the Trial Court.



12. The petition is accordingly dismissed alongwith pending applications.

**MANOJ KUMAR OHRI
(JUDGE)**

NOVEMBER 5, 2024/*js*