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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 1312/2024, CRL.M.A. 35361/2024**
SAVITRI DEVIPetitioner
Through: appearance not given.
versus

STATE GNCT OF DELHI. & ORS.Respondents
Through: Ms. Kiran Bairwa, APP for the State
with SI Kamal Chaudhary, PS Prem
Nagar.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
% **26.11.2024**
CRL.M.A. 35360/2024 (Exemption)

Exemption is allowed subject to all just exceptions.

CRL.REV.P. 1312/2024

1. Present petition has been filed challenging the impugned order dated 22.08.2024 whereby learned trial Court has ordered for framing of charge under Section 308/34 IPC in relation to FIR no. 726/22 registered at PS Prem Nagar.
2. Briefly stated, the facts of the present case are that an FIR was registered on 08.08.2022 on the statement of the complainant, Rajendra Devi, who had alleged on 07.08.2022, at about 5:30 PM, while she was outside her house Shiv Kumar's daughter-in-law, Anita @ Sunita, and Kajal began abusing her in filthy language. When she objected, they allegedly called their family members, leading to an altercation. Shiv Kumar along with his wife Savitri, the petitioner herein, and their sons, joined the scene and they began physically



assaulting her. Hearing the commotion, her husband, Anokhe Lal, and son, Ravi Kumar, came outside, at which point Shiv Kumar allegedly along with the other accused persons reportedly began beating them with bricks, stones, and sticks, inflicting severe injuries. It has been alleged that the son of complainant namely Ravi Kumar, fell unconscious due to head injuries, following which the accused left the spot. The complainant further stated that Shiv Kumar's family including the petitioner herein, along with 3-4 unidentified individuals, participated in the assault after which they called the police and were taken to SGM Hospital Mangol Puri for treatment.

3. After completion of investigation, the chargesheet was filed against all the accused persons under Sections 308/34 of IPC. Thereafter, the learned Trial Court vide impugned order dated 22.08.2024 had framed charges under Sections 308/34 of IPC against accused persons including the petitioner herein.
4. Learned counsel for the petitioner submits that the charges have been framed by the learned Trial Court in a mechanical and perfunctory manner, reflecting a lack of due consideration of material evidence. It is further submitted that the learned Trial Court failed to recognize that the case stems from a long-standing property dispute between the families of the complainant and the petitioner, which is also the subject of ongoing civil litigation.
5. It has been submitted that complainant has also admitted the existence of the property dispute with the petitioner's husband, which clearly indicates that there is a clear motive for false implication aimed at exerting pressure and gaining leverage in the civil



proceedings.

6. Moreover, learned counsel submits that the Trial Court has disregarded crucial evidence in the form of CCTV footage from the alleged incident that unequivocally demonstrates that the petitioner was not involved in the altercation and that no injuries were inflicted upon the complainant or her family members by the petitioner.
7. It is also submitted that the injuries sustained by the complainant and her family members are minor and simple in nature, failing to meet the requisite criteria under Section 308 IPC. Learned Counsel for the petitioner submits that none of the alleged victims required extended medical care and were discharged on the same day, establishing that the injuries were not serious.
8. Further, learned counsel submits that the Trial Court has solely relied on the statements of the complainant's family, who are interested witnesses, without seeking corroboration from independent or reliable evidence. Moreover, it is submitted that the complainant's version of events is inconsistent and does not align with the sequence of events as captured in the CCTV footage.
9. In view of these submissions, learned counsel for the petitioner submits that the charges have been framed without proper application of judicial mind and that the petitioner deserves to be discharged from the case.
10. *Per contra*, learned counsel for the State submits that the allegations leveled against the petitioner in the present case are grave. It has been submitted that the learned Trial Court, after thoroughly examining the material on record, has rightly concluded that sufficient grounds exist



for framing charges against the petitioner.

11. At this juncture, it is appropriate to discuss the law of charge and discharge which is governed by Section 227 and 228 of Cr.P.C. respectively. Section 227 and 228 Cr. P.C. read as under:

Section 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.

Section 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 Magistrate 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.

12. Bare perusal of the aforesaid establishes that the trial court shall frame the charges in terms of Section 228 of the Code of Criminal Procedure, 1973 when sufficient grounds exist, unless the accused is discharged u/s. 227 Cr.P.C. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith. The expression "the record of the case" 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 has to be confined to the material produced by the investigating agency.

13. In the case of *Sajjan Kumar v. C.B.I.* (2010) 9 SCC 368, it was *inter alia* held that at the time of framing of charge, the Court has to look at all the material placed before it and determine whether a *prima facie* case is made out or not, and the Court is not required to consider the evidentiary value of the evidence as any question of admissibility or reliability of evidence is a matter of trial. It was *inter alia* held as under:

"21. On consideration of the authorities about 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 of the Cr.P.C. 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.

(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 discloses 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.”

14. In **Asim Shariff v. National Investigation Agency** (2019) 7 SCC 148, it was *inter alia* held that at the stage of framing of charge, the Trial Court is not expected to hold a mini trial for the purpose of marshalling the evidence on record. It was *inter alia* held as under:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him.

15. In **Bhawna Bai v. Ghanshyam** (2020) 2 SCC 217, it was *inter alia* observed as under:

“13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

16. Thus, in view of the aforementioned judicial precedents on the law of charge and discharge, it is no longer *res integra*, that the scope of the jurisdiction at the stage of framing of charge is very limited. The Court at this stage, has to see a prima facie case and cannot enter into the meticulous examination of the trial. It is also a settled proposition



that at the stage of charge, the Court is not required to pass a detailed order. 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. At the stage of framing of charge, the court has to form an opinion as 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 lead to conviction at the conclusion of trial. Reliance can be placed on ***State of Maharashtra Vs. Som Nath Thapa*** (1996) 4 SCC 659 and the ***State of MP Vs. Mohan Lal Soni*** (2000) 6 SCC 338.

17. Furthermore, it is also pertinent to mention that the revisional jurisdiction, particularly in framing of charge, is also limited. Section 397 of the Code empowers the court to call for and examine the records of an inferior court to ensure the legality and regularity of proceedings or orders.

18. The scope of Section 397 Cr.P.C. came up for discussion by the Apex Court in ***Amit Kapoor Vs. Ramesh Chandra*** (2012) 9 SCC 460 wherein it was *inter alia* held as under:

“12. Section 397 of the Code 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. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional



jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.”

19. In view of the above, it is clear that the revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency and lacunas in the case of the prosecution. In assessing whether charges have been properly framed in accordance with the law, the revisional court is generally reluctant to intervene unless there is incorrectness, illegality, or perversity in the trial court's order.
20. In the present case, the learned Principal District and Sessions Judge, after carefully examining the rival contentions and the case record, has framed charges against the accused under Sections 308/34 IPC via the impugned order. The court, taking into account the statements of witnesses, observed that the accused, acting on the exhortation of Shiv Kumar, assaulted Rajendri, her husband Anokhe Lal, and son Ravi



Kumar by striking their heads with dandas, bricks, and silli. The Medical Legal Certificates (MLCs) were found to corroborate these statements, showing that Rajendri sustained a lacerated wound on the right parietal region of her head, while Ravi Kumar and Anokhe Lal suffered lacerated wounds on the left parietal regions of their heads.

21. It is pertinent to note that the Learned Sessions Judge correctly noted that intention or knowledge cannot be directly evidenced and must be inferred from the facts and circumstances presented in the evidence at the time of Trial. The injuries inflicted on the victims' vital body parts, i.e., their heads, with the aforementioned objects, establish a prima facie case under Sections 308/34 IPC against the accused.

22. In view thereof, this Court does not find any illegality or perversity in the order of the learned Trial Court and accordingly, the present petition is dismissed.

DINESH KUMAR SHARMA, J

NOVEMBER 26, 2024/*Pallavi/smg*