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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 08.02.2024*
+ **CRL.REV.P. 444/2008**

STATE OF N.C.T. OF DELHI Petitioner
Through: Mr. Utkarsh, APP for the
State with SI Sunil, PS
Adarsh Nagar.

Versus

LAXMI & ORS. Respondents
Through: Mr. Vishal Raj Sehijpal
through V.C.
Ms. Sunita Arora, Adv.
DHCLSC, for R-4.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed under Section 397/401 of the Code of Criminal Procedure (Cr.P.C) challenging the order dated 12.03.2008 (hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**') in FIR No. 367/2006 registered under Section 302/307/323/34 of the Indian Penal Code, 1860 ('**IPC**').
2. The learned ASJ by impugned order has framed charges against the respondent /accused under Sections 323/324/325/304/34 IPC.



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3. The State is aggrieved by the impugned order to the extent that the charges under Section 302/307 are not framed against the respondents.

4. The FIR was registered pursuant to a complaint given by one Satish. The complainant had stated that his family is running a dairy farm, and one Laxmi is their neighbour. He alleged that both the families, that is, of the complainant and Laxmi, often used to quarrel with each other on the issue of throwing of cow dung.

5. It was alleged that on 27.06.2006, at around 11:45 pm, the complainant along with his three brothers, namely, Rakesh, Vikas and Satender had gone to their dairy farm where they saw that respondent namely Laxmi, Devender, Anil and Ashfaq @ Mannu were threatening the complainant's servant present at their dairy farm.

6. It was further alleged that Devender and Anil were carrying swords and Laxmi and Ashfaq had *dandas*. Upon reaching the dairy a scuffle took place between the respondents, and the complainant and his brothers. It was also alleged that one Sonu, who is stated to be an associate of Anil, also came on the spot and attacked the complainant and his brothers.

7. It was alleged that the complainant and his brothers were beaten up by the respondents and sustained injuries. After the alleged incident the Complainant and his brothers were taken to Babu Jagjivan Ram Hospital.

8. The MLC conducted at Babu Jagjivan Ram Hospital



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indicated all the injured are fit for statement except one Rakesh. Rakesh was referred to Trauma Centre where he succumbed to his injuries on 28.09.2006. Vikas (injured/brother of the complainant) later also went to St. Stephen's Hospital and where he obtained treatment and remained admitted from 28.06.06 till 30.06.06 and the doctor upon finding a fracture on the right frontal bone opined the nature of injury to be "grievous".

ANALYSIS

Scope of interference under Revisional Jurisdiction

9. The present petition has been filed under Section 401 of the CrPC. The Hon'ble Supreme Court in the case of **Krishnan v. Krishnaveni: (1997) 4 SCC 241**, has noted that in the matter of exercise of power of revision, Section 397 and Section 401 of the CrPC are required to be read together.

10. Before delving into the facts of the present case, it is important to note that it is a settled law that the scope of interference by High Courts while exercising revisional jurisdiction is limited and ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily.

11. The power and jurisdiction of a higher court while exercising powers under Section 397 Cr.P.C. is the power to call for and examine records of an inferior court for the purposes of satisfying itself as to the legality and regularities of any proceeding 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 or



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the perversity which has crept in such proceedings. The Hon'ble Apex Court in the case of ***Amit Kapoor v. Ramesh Chandra*** (2012) 9 SCC 460, has considered and explained the scope of Section 397 of Cr.P.C. The relevant paragraphs of ***Amit Kapoor v. Ramesh Chandra*** (*supra*) are reproduced 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



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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.”

12. Prosecution has challenged the order passed by the learned Trial Court framing charges while exercising power under Section 228 of the CrPC. It is trite law that the trial court, while framing charges under Section 228 of the CrPC, is not required to conduct a mini trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are prima facie made out against the accused persons. The Hon’ble Apex Court, in the case of **Sajjan Kumar v. CBI: (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

“21. On consideration of the authorities about the 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 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.*



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- (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.”*

(emphasis supplied)

13. In the case of ***Amit Kapoor v. Ramesh Chander*** (*supra*), the Hon'ble Apex Court, advertent to a catena of precedents, has also noted that the test for interference is 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.

14. In view of the above, it is clear that this Court, at this stage, is not required to reevaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming



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appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether on the material placed before it, the Court could form an opinion that the accused might have committed the offence as alleged.

15. In the present case, the main thrust of the prosecution is on the point that the ingredients of offences punishable under Sections 302 and 307 of the IPC are satisfied as the respondents gave beatings to the injured and the deceased. The death of the deceased was caused by injuries inflicted from giving blows from a stick / *danda*, and the respondents are erroneously discharged by the learned Trial Court for offences under Sections 302 and 307 of the IPC.

16. The learned Trial Court after going through the material on record noted that there is nothing to show that the accused persons had the common intention to commit the murder of the deceased (Rakesh), and *prima facie* observed that the incident occurred on a sudden quarrel, which took place between the parties, since the accused persons were present at the place of incident and as per the FIR complainant along with other injured had gone for a walk when the incident took place.

17. The learned Trial Court had also gone through the nature of injuries and rightly observed that the accused persons cannot escape from the liability of having the knowledge that the bodily injuries being caused on deceased (Rakesh) were such as were likely to cause death and, charged the accused person for offence



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under Section 304 of the IPC.

18. The learned Trial Court also noted the fact that the Investigating Officer had failed to collect the opinion on the nature of weapons being used by the accused. However, the learned Trial Court considered the two incision wounds suffered by the injured Satish, and observed that it could not be presumed that the injuries were not caused by a sharp edged weapon. The learned Trial Court also considered that the doctors had opined that the injuries suffered by the victim Satish were simple in nature. Thus, the learned Trial Court framed charges for the offence under Sections 324/34 of the IPC against the accused persons taking into account the number and nature of injuries suffered by the injured Satish. It also noted the opinion of the doctor regarding the same and the fact that the victim Satish was found to be fit to tender a statement soon after the incident.

19. The learned Trial Court further held that the Court cannot presume, merely on the basis of conjectures, that the nature of injuries caused by the accused persons are sufficient to hold them liable for the offence under Sections 302 or 307 IPC.

20. The learned Trial Court while passing the impugned order was also cautious of the fact that, at the stage of the framing of charge the learned Trial Court cannot go into the deep analysis of the case and only a *prima facie* inference is warranted.

21. The learned Trial Court has rightly opined that the Court cannot shirk away from the responsibility of coming to a definite conclusion as to what *prima facie* offence is made out from the



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facts and circumstances, and the same is plausible to ascertain from the material placed on record. The learned Trial Court in terms of Section 216 of the Cr.P.C is also at liberty to alter the charge if it deems appropriate at any stage.

22. This Court is of the opinion that the learned Trial Court has evidently applied its judicial mind and considered the totality of the acts before framing the charges. In view of the foregoing discussion, no ground is made out to warrant any interference with the impugned order.

23. It is also stated that since the passing of the impugned order the trial has not proceeded against the respondents.

24. In view of the above, the present petition is dismissed.

25. The Fir was registered way back in the year 2006. The learned Trial Court is directed to proceed with the trial, in an expeditious manner.

AMIT MAHAJAN, J

FEBRUARY 8, 2024

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