



2024:DHC:6420



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 26.07.2024*

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+ **CRL.REV.P. 574/2017**

STATE

.....Petitioner

Through: Mr. Ajay Vikram Singh,
APP for the State along
with Mr. Akshay Shokeen,
Mr. Hanush Rathee, Ms.
Mahima Yadav, Mr.
Madhav Sharma, Mr. Ritik
Raj, Ms. Harleen Kohli,
Ms. Sonali Chaudhary,
Advs.

versus

PRINCE & ANR

.....Respondent

Through: Mr. Dharmendra Kumar
Mishra along with Mr.
Neeraj Singh Deswal, Ms.
Ushma Bhaskar & Ms.
Aashika Aggarwal, Advs
for R-1 & R-2.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present petition is filed challenging the order dated 05.12.2016 (hereafter '**the impugned order**') passed by the learned Additional Sessions Judge-02, Karkardooma Courts,

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New Delhi in FIR No. 130/2016, registered at Police Station Gokul Puri, for offences under Sections 302/34/120B of the Indian Penal Code, 1860 ('IPC').

2. The learned ASJ, by the impugned order, had discharged the respondents for the offences punishable under Sections 302/34/120B of the IPC.

3. The case of the prosecution is that a dead body was found on 18.02.2016 and was identified to be of one, Neeraj. It is alleged that the deceased had left his house on 17.02.2016 with his friend, namely, Anuj (accused not arrested) to attend the marriage of cousin of accused Prince/Respondent no.1. It is alleged that when the deceased was leaving the house with Anuj, the sister of the deceased overheard Anuj speaking on phone with accused Prince, telling him that they were on their way. The prosecution claims that the motive behind the murder was Anuj's alleged affair with deceased's wife, which led him to conspire with the other respondents.

4. During the investigation, blood-stained stones were discovered at the crime scene, along with a motorcycle that the deceased is said to have ridden with Anuj. It is further alleged that this motorcycle was recovered based on information provided by Respondent No. 1.

5. After the completion of the investigation, chargesheet was filed against the respondents for offences under Sections 302/34/120B of the IPC.



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6. Thereafter, as noted above, the learned ASJ by the impugned order discharged the respondents for offences punishable under sections 302/34/120B IPC, and held as under:

“Arguments heard on behalf of the Learned Counsel for the Accused and Learned APP for the state.

The investigation in the present matter has been conducted lackadaisically leaving many loose ends, there is no direct material against either accused persons and even the circumstantial evidence relied upon in incriminating. The only fact that the material on record prima facie establishes is that the deceased left with Anuj for the wedding. All the other fact claimed to have been disclosed by the accused persons are not supported by any material evidence whatsoever. Both the accused persons Prince and Amit are discharged accordingly.

7. Aggrieved by the aforesaid order, the petitioner has preferred the present petition.

8. The learned Additional Public Prosecutor for the State submits that the impugned order is based on imagination, presumption, conjectures and surmises and cannot stand the scrutiny of law being not based on facts of the case.

9. He submits that the present case is of circumstantial evidence. The sister and mother of the deceased saw him leaving on the motorcycle which is recovered by the police with Anuj.

10. He submits that the learned Trial Court overlooked the statement of witness Sonu under Section 164 of the CrPC. In his statement, Sonu recounted that on the night of 17-18.02.2016, at around 2:30 AM, the deceased knocked on his door with a head injury, requesting for a mobile phone to make a call. The deceased then called a number associated with accused Prince/Respondent No.1 and informed him that he had been in an accident and needed immediate assistance. PW Sonu further



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stated that the respondents arrived at his house following the call, and he later discovered that someone killed the deceased.

11. He submits that the learned Trial Court failed to appreciate that the respondents in their disclosure statements stated that accused – Anuj, was involved in illicit relationship with the deceased's wife and conspired with them to commit the murder of the deceased.

12. *Per contra*, the learned counsel for the respondents argues that there is no infirmity in the order passed by the learned Trial Court and a well-reasoned order is passed by the learned Trial Court after considering the material on record and warrants no interference. Thus, it is prayed that the present petition be dismissed.

13. I have heard arguments advanced by the learned counsel for the parties and have perused the material placed on record.

14. Since the prosecution has assailed the impugned order discharging the respondents, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the CrPC.

The same is set out below :

“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.

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--



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(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, 1 [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.”

15. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge on discharging the accused is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. [Ref: ***Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460***]

16. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI: (2010) 9 SCC 368***, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under:

“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

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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 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)



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17. In a recent decision in *State of Gujarat v. Dilipsinh Kishorsinh Rao* : 2023 SCC OnLine SC 1294, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, 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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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.



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18. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

19. The learned APP for the state contends that the present case is of circumstantial evidence. The sister and mother of the deceased saw the deceased leaving on the motorcycle driven by Anuj. A public witness Sonu- saw the injuries of the deceased just before he was murdered. He further states that as per the disclosure made by the accused persons, the offence has been committed at the instance of the accused – Anuj, however, he has not been arrested yet.

20. A bare perusal of the complaint shows that the police suspected stone to be the weapon of offence and they had seized two blood-stained stones however, no effort was made by the police to lift and chance prints from the said stones.

21. The respondents are sought to be implicated by stating that the sister of the deceased overheard Anuj speaking to Respondent No. 1 that they are on their way. It is contended that the accused Anuj was informing the respondents that the victim has left with him and, therefore, the respondents were also involved. Even as per the witness, the deceased had left with Anuj to attend the marriage of cousin of Respondent No. 1. Therefore, the accused Anuj informing the Respondent No. 1 that he has left with the deceased to attend the marriage, in the opinion of this Court, does not give rise to a grave suspicion that



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the Respondent No. 1 was conniving with Anuj to murder the deceased.

22. The statement of Sonu is then relied upon to contend that on being called, the respondents came to the house of witness Sonu to look for the deceased. It is relevant to note that the witness Sonu had categorically stated that the deceased knocked on his door and was injured with head injury. The deceased had called the Respondent No. 1 and informed him that he had been in an accident and needed immediate assistance. The witness further disclosed that the respondents then came to his house looking for the deceased and when he was not found, took his motorcycle to look for him.

23. The statement given by the witness, in the opinion of this Court, does not even raise a suspicion, much less, a grave suspicion required for framing a charge against the respondents.

24. The police merely rely on the disclosure statements of the respondents without any corroborating material which would connect them with the commission of the alleged offence. It is rightly pointed out by the learned Trial Court that just the fact that the deceased called Respondent No.1 in the presence of the independent witness, Sonu, without any other incriminating evidence does not prima facie show his involvement in the alleged offence. On the contrary, it reflects confidence and trust of the deceased on the said person. Even the motive alleged is not supported by any material. No doubt absence of motive by itself may not be sufficient to dislodge the prosecution case if the other proven circumstances could form a chain so complete as to



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indicate that in all human probability it is the accused and no one else who committed the crime but, in a case based on circumstantial evidence, motive plays an important part inasmuch as , not only it makes the story believable but also helps the court in fortifying an inference which may be drawn against the accused from other attending circumstances.

25. As there existed no eyewitness account of the murder, the prosecution rested its case on circumstances. In such circumstances, even to sustain conviction, the court would have to consider- (i) whether the circumstances relied by the prosecution have been proved beyond reasonable doubt; (ii) whether those circumstances are of a definite tendency unerringly pointing towards the guilt of the accused; (iii) whether those circumstances taken cumulatively form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused; (iv) whether they are consistent only with the hypothesis of the accused being guilty; and (v) whether they exclude every possible hypothesis except the one to be proved.

26. Indisputably, the prosecution has no other material or evidence corroborating with the disclosure statements of the respondents to hold them guilty for the alleged offence. The learned ASJ was correct in concluding that the material on record does not directly incriminate the respondents. The circumstantial evidence fails to raise a grave suspicion against the respondents beyond reasonable doubt.



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27. In light of the material perused, arguments heard and principles considered, no infirmity is found in the impugned order. The learned Trial Court's order to discharge the respondents is upheld.

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

AMIT MAHAJAN, J

JULY 26, 2024
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