HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Revision Petition No. 1193/2023

1. Sachin Singh S/o Shri Roshan Lal, Aged About 24 Years, R/o Ward No. 4, Dudwa Khara District Churu (Raj) (At Present Confined In District Jail Jhunjhunu)
2. Rahul Kumar @ Gutiya S/o Shri Payare Lal, R/o Bhamu Ka Bas, Police Station Bisau, District Jhunjhunu (Raj) (At Present Confined In District Jail Jhunjhunu)
3. Anil S/o Shri Rajendra, Aged About 25 Years, R/o Village Chimanpura, Police Station Rajgarh, District Churu (Raj) (At Present Confined In District Jail Jhunjhunu)
4. Praveen Kumar S/o Shri Virendra, Aged About 31 Years, R/o Khidarsar, Police Station Bisau, District Jhunjhunu (Raj) (At Present Confined In District Jail Jhunjhunu)
5. Dilip Kumar @ Jugal Poonia S/o Shri Jagdish, Aged About 38 Years, R/o Chandwa, Police Station Bisau, District Jhunjhunu (Rja)(At Present Confined In District Jail Jhunjhunu)

----Petitioners

Versus

1. State Of Rajasthan, Through Public Prosecutor
2. Vivek Kumar Son Of Shri Mahendra Singh, Aged About 39 Years, R/o Village Chandwa Police Station Bisau Dsitrict Jhunjhunu (Raj)

----Respondents

For Petitioner(s)	:	Mr. S.S. Hora with Mr. Sahaj Veer Baweja
For Respondent(s)	:	Mr. Sunil Kumar Swami Mr. Yashwant Khankhedia, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Judgment / Order

20/12/2024

1. Instant revision petition is preferred by petitioners-accused aggrieved from order dated 01.08.2023 in Sessions Case BT

No.20/2023 arising out of FIR No.154/2022, P.S. Bisau, District Jhunjhunu whereby learned trial court has directed to frame charge under Sections 323, 341, 325, 307 and 34 IPC, against/petitioners.

2. Learned counsel for the petitioners while referring the grounds of revision petition has submitted that they have challenged the order of framing of charge and specifically challenging framing of charge under Section 307 or 307/34 IPC. He further submits that there is no material on record to draw a conclusion that any of the injured has sustained any injury which is sufficient to cause death. He further submitted that the opinion of medical jurist clearly indicate that injuries nos.1 to 5 upon Mahendra Singh were grievous in nature but they were not dangerous to life. He further referred the statement of witnesses and submitted that even from evidence on record nowhere it was mentioned that the assault was intention to cause death. He specifically referred FIR and submitted that even in report submitted to police the ingredient under Section 307 IPC were missing. He referred the statement of witnesses recorded under Section 161 Cr.P.C. and submitted that the trial court has committed serious error while not considering the legal position under Section 227 of Cr.P.C. He also referred the material forwarded by police and submitted that all injuries were on non vital parts, therefore, same is not sufficient to frame a charge under Section 307 IPC.

3. Learned counsel for the petitioners has referred judgment of Hon'ble Supreme Court in case of **Ghulam Mustafa Vs. State of Uttaranchal (Now Uttarakhand)** reported in **(2016) 15 SCC 752** and submitted that there should be essential ingredient to justify the charge under Section 307 IPC and in absence of such ingredient, the petitioners are entitled for discharge. He further referred judgment dated 14.11.2017 in **S.B. Criminal Revision No.586/2016** titled as **Dayanand and Ors. Vs. State of Rajasthan and Ors.** and **Bakhtawar Singh Vs. State of Rajasthan, 1999 SCC OnLine (Raj.) 309** and submitted that in absence of ingredient and material to frame charge under Section 307 IPC, a charge cannot be framed under Section 307 IPC. He also referred judgment in case of **Premchand S. Bansode and Anr. Vs. State of Maharashtra** reported in **2006 SCC OnLine Bombay 1303**, **Nand Singh Vs. State of Punjab** reported in **2006 SCC Online P&H 1500**, **Bisai Vs. State, MANU/UP/2104/1999**,**Tamil Selvan Vs. State of Pondicherry** reported in **1996 (2) MWN (Cr.) 110**.

4. Aforesaid contentions were opposed by learned counsel for the respondent no.2-complainant and learned Public Prosecutor. Learned counsel for the complainant has submitted that the assault was made with intention to kill injured Mahendra Singh. He also submitted that the manner in which the assault was made on multiple occasions, and resulted into five fracture on the body, is sufficient to constitute offence under Section 307 IPC. He also submitted that the trial court has assigned sufficient reasons to frame a charge under Section 307 IPC, therefore there is no scope

in the instant revision petition to interfere in the order passed by the trial court.

5. Heard learned counsels for the parties and learned Public Prosecutor. Perused the entire material placed on record. Also considered the judgment as referred by learned counsel for the petitioners.

6. Brief facts of the case are that the complainant-Vivek Kumar has filed a written report on 01.09.2022 for assault by 4-5 persons upon his father Mahendra Singh during morning walk. The complainant has mentioned that the condition of his father is critical. On basis of this report FIR No.154/2022 was registered under Sections 143, 341, 323 and 308 IPC. After investigation police has filed a charge-sheet against petitioner-Dilip Kumar @ Jugal Poonia, Sachin Singh and Anil under Sections 341, 323, 325, 307 and 34 IPC. This charge-sheet was committed for trial on 26.05.2023 by learned Additional Judicial Magistrate, Jhunjhunu.

7. After considering submission on discharge under Section 227 Cr.P.C. and framing of charge under Section 228 of Cr.P.C. learned Additional Sessions Judge No.1, Jhunjhunu has opined that from material on record prima facie charge under Sections 341/34, 323/34, 325/34 and 307/34 IPC is made out but there is no case of discharge. After considering the various judgments, the trial court was of the view that to attract provision under Section 307 of IPC it is not necessary that the injury should be on fatal part of the body.

8. Section 227 of Cr.P.C. deals with the discharge of accused in Sessions Case and in case, he is not discharged then the Session Court is obliged to consider framing of charge against the accused under Section 228 of Cr.P.C. While considering the material forwarded by investigating agency/prosecution for facing trial, the accused has a right to ask for discharge, under Sections 227 and 239 of Cr.P.C. If there is no sufficient ground on basis of material forwarded by prosecution then the accused is entitled for discharge but when there is sufficient material then the Court is duty bound to frame a charge. Needless to say that before forming any opinion it is duty of the Court to assign a reason either for discharge or for framing of charge. A detailed reasons are not required for framing of charge against anyone but it is expected from the trial court to give at least brief reasons to frame charge.

9. In case of **Vishnu Kumar Shukla & Anr. Vs. The State of Uttar Pradesh & Anr.** reported in **2023 INSC 1026**, Hon'ble Supreme Court after considering several judgments have referred the analysis and reasoning about approach of the court in light of language used under Sections 227 and 239 of Cr.P.C. and we reproduced the same as under:-

> "20. In **State of Tamil Nadu v N Suresh Rajan, (2014) 11 SCC 709**, it was observed notwithstanding the difference in language of Section 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Section 227 and 228, CrPC are well settled,

courtesy, inter alia, **State of Bihar v Ramesh Singh, (1977) 4 SCC 39; Union of India v Prafulla K Samal, (1979) 3 SCC 4; Stree Atyachar Virodhi Parishad v Dilip N Chordia, (1989) 1 SCC 715; Niranjan Singh Karam Singh Punjabi v Jitendra B Bijjaya, (1990) 4 SCC 76; Dilawar B Kurane v State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai Jagdishchandra Patel v State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v Shiv Charan Bansal, (2020) 2 SCC 290**. We need only refer to some, starting with Prafulla K Samal **(supra)**, where, after considering Ramesh Singh **(supra)**, **K P Raghavan v M H Abbas, AIR 1967 SC 740** and **Almohan Das v State of West Bengal, (1969) 2 SCR 520**, it was laid down as under:

> ‘10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:
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> (1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however

> does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.' (emphasis supplied)

10. In case of **State of Gujarat Vs. Dilipsingh Kishorsinh Rao, 2023 INSC 894**, Hon'ble Supreme Court after considering the settled position of law for framing of charge under Sections 227 and 228 Cr.P.C. held 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.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge- sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

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 existence of the ingredients necessary of the offence alleged. The Supreme Court in **State of Tamil Nadu Vs. N. Suresh Rajan and Ors. (2014) 11 SCC 709** adverting 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."

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. The Supreme Court by referring to its earlier decisions in the **State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659** and the **State of MP Vs. 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."

11. In case of **Captain Manjit Singh Virdi (Retd.) vs Hussain Mohammed Shattaf, AIR 2023 SC 2480** while relying upon judgment in case of **State By Karnataka Lokayukta Police Station, Bengaluru Vs. M.R. Hiremath reported in (2019) 7 SCC 515** and **State of Rajasthan Vs. Ashok Kumar Kashyap reported in (2021) 11 SCC 191,** Hon'ble Supreme Court has held that at the stage of framing of charge entire evidence produced by prosecution is to be believed. In case, no offence is made out then only accused can be discharged but truthfulness, sufficiency and acceptability of material by investigating agency

can be done only at the stage of trial. At the stage of charge, court has to satisfy that a prima facie case is made out against accused persons or not, but interference at the stage of charge requires strong reasons.

12. Learned counsel for the petitioners have referred judgment in case of **Ghulam Mustafa Vs. State of Uttaranchal (supra), Bakhtawar Singh Vs. State of Rajasthan (supra)** and **Dayanand Vs. State of Rajasthan (supra)** and others to impress upon the court that when grievous injury is not caused upon vital part of the body and same is not dangerous to life then provision under Section 307 IPC is not attracted. Herein this case, there were eight injuries upon on body of Mahender Singh, when he was examined on 06.09.2022 by medical jurist. Though he was admitted in hospital on 01.09.2022. Out of these five injuries were grievous in nature and medical jurist as opined that these injuries were not dangerous to life. There is evidence multiple blows on body of victim injured.

13. In case of **Sheoyeb Raja Vs. State of Madhya Pradesh & Ors., 2024 INSC 731** Hon'ble Supreme Court has considered provision of Section 307 IPC in light of judgment in case of **State of Maharashtra Vs. Kashirao & Ors.** reproted in **(2003) 10 SCC 434**, **Om Prakash Vs. The State of Punjab** reported in **1961 SCC OnLine (SC) 72**, **Hari Mohan Mandal Vs. State of Jharkhand** reported in **(2004) 12 SCC 220**, and observed that while considering a framing of charge under Section 307 IPC, the question is intention to kill or knowledge of death and same is a question of fact and not one of law.

14. Having considered the entirety of facts and circumstances of the case, it is quite apparent on record that multiple assaults were caused upon injured Mahendra Singh and these assault have resulted into multiple injuries. Thus, looking to material placed on record, we disagree with the contention raised by learned counsel for the petitioners, therefore, the petition has no force and liable to be dismissed.

15. In view of aforesaid, the revision petition is hereby dismissed. Misc. application, if any, stands disposed of.

(ASHOK KUMAR JAIN),J

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