



2025:DHC:2419



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 08.04.2025*+ **CRL.M.C. 2485/2022**

PRITAM SINGH SINCE DECEASED THROUGH HIS LR
REPRESENTED BY S BAKSHISH SINGHPetitioner

Through: Mr. R.K. Saini, Advocate.

versus

STATE OF GNCT OF DELHI & ORS.Respondents

Through: Mr. Raj Kumar, APP for the
State.

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C*'] has been filed on behalf of the petitioner, seeking setting aside of the order dated 29.11.2021 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge-02, Karkardooma Courts (East), Delhi [hereafter '*Revisionist Court*'] in CR No. 304/2019.

2. By way of the impugned order, the learned Revisionist Court was pleased to dismiss the said revision petition and affirm the order dated 25.09.2019 passed by the learned Metropolitan Magistrate, Karkardooma Courts (East), Delhi [hereafter '*Trial Court*'] in CIS



2025:DHC:2419



No. 47887/16, titled “Pritam Singh vs. Rajender Singh & Ors.”, Police Station Geeta Colony, Delhi.

3. Succinctly, the facts of the case, leading to the filing of present petition are as follows:

- I. The present case originates from a complaint filed on 16.08.1994 by Sh. Pritam Singh (since deceased) and Sh. Jasbir Singh, before the learned Trial Court, against eleven accused persons, including the respondents herein. The complainants and the accused persons shared familial ties, as set out in the complaint.
- II. Sh. Jasbir Singh, complainant no. 2, claimed ownership of one property no. 13/207, Geeta Colony, Delhi, [hereafter also referred to as ‘*the Premises*’] based on a Will dated 14.04.1980 executed by his grandmother Smt. Har Kaur, who had passed away on 25.04.1980. Sh. Jasbir Singh alleged that he had been residing in the Premises when her grandmother was alive, occupying one room, kitchen, toilet, and bathroom, while his father, Sh. Pritam Singh, operated a furniture workshop under the name M/s Paradise Furniture House from another portion of the Premises.
- III. The complainants contended that accused no. 1, Rajender Singh, who was serving in the Air Force, had been transferred out of Delhi and had to vacate his official accommodation. Seeking temporary shelter, Sh. Rajender Singh had requested



2025:DHC:2419



permission to reside in the Premises, to which Sh. Jasbir Singh, with his father's consent, had agreed in May 1992. He was allowed to occupy a two-room set on a temporary basis, while the remaining portion continued to be used by the complainants for their residence and business.

- IV. Over time, accused nos. 1 to 4 had allegedly refused to vacate the Premises and, with the support of accused nos. 5 to 11, pressured Sh. Pritam Singh to close his workshop, purportedly to take over the Premises. On 18.04.1994, at around 9:00 PM, accused no. 3, Guljit Singh, had allegedly threatened Sh. Pritam Singh to shut down his workshop. Fearing imminent harm, Sh. Pritam Singh had gone to P.S. Geeta Colony with one Sh. Hari Nihal Singh to lodge a report, but the Duty Officer had allegedly refused to register his complaint. Upon approaching the SHO, Sh. Ram Niwas, Sh. Pritam Singh was directed to meet Ct. Rajender Singh, who instead booked Sh. Pritam Singh alone under Sections 107/151 of Cr.P.C., whereas accused no. 3 was let off. Sh. Pritam Singh was detained overnight.
- V. Upon being released on bail on 19.04.1992, Sh. Pritam Singh lodged another complaint (DD No. 11A, dated 19.04.1992), which was assigned for inquiry to S.I. Roop Chand, who had visited the Premises and prepared his report. However, the harassment had allegedly continued. On 20.04.1992, while returning home, Sh. Pritam Singh had been accosted by



2025:DHC:2419



accused no. 1 (Rajender Singh), accused no. 3 (Guljit Singh), and two unknown persons. Sh. Rajender Singh allegedly brandished a revolver and threatened him to shut down his workshop. A complaint regarding the same was filed at 7:00 PM (DD No. 14A, dated 20.04.1992) at P.S. Geeta Colony.

- VI. On the same day, accused persons had allegedly broken into the complainants' portion of the Premises, and thrown out raw materials, furniture, and tools, and stole valuable items. ASI Shanti Lal had witnessed the incident but had not intervened. When Sh. Pritam Singh had called a PCR van, ASI Har Pal Singh had reached the spot but he had also failed to take any action. Later, Sh. Gurvinder Singh, the other son of Sh. Pritam Singh, had made PCR calls to higher officers (ACP/DCP). The SHO had arrived at the spot but, allegedly, had coerced the complainants into a compromise and had also wrongfully detained them till 2:30 AM on 21.04.1992. The next morning, when the complainants had sought a copy of the FIR, they were informed that no FIR had been registered.
- VII. It is alleged that despite repeated complaints to the DCP (Vigilance) and other authorities, the complainants' grievances were not addressed. Meanwhile, the police, allegedly under the influence of the accused persons, had registered FIRs No. 97 and 98 of 1992 under Sections 448/452/353/186/332 of IPC against the complainants and their family members, who were forcibly taken to the police station on 24.04.1992.



Additionally, the complainants had filed a civil suit for recovery of possession, which was pending. As alleged, the accused persons continued to threaten the complainants.

4. In these circumstances, the complainants had filed a criminal complaint before the learned Trial Court on 16.08.1994. On 17.08.1994, the learned Trial Court had directed the SHO, P.S. Geeta Colony to investigate the case under Section 156(3) of Cr.P.C. Thereafter, due to the complainants' lack of faith in the local police, an order dated 22.08.1994 was passed thereby directing DCP Vigilance to conduct an independent inquiry, the report of which was filed on 04.03.1995. The complainants, dissatisfied with the inquiry report, had challenged its findings, and the learned Trial Court granted them an opportunity to lead pre-summoning evidence, which began thereafter.

5. The complainants had examined multiple witnesses, including Sh. Pritam Singh (CW-30), whose statement was recorded on 07.07.1997. Upon conclusion of pre-summoning evidence, the case was fixed for arguments on summoning. The learned Trial Court, by order dated 02.07.2001, summoned all eleven accused persons for commission of offence under Sections 147/148/448 read with Section 149 of IPC. By order dated 11.01.2007, the case was set for pre-charge evidence, during which the complainant had examined multiple witnesses. On 13.09.2019, pre-charge evidence was closed, and arguments on charge were heard.

6. Subsequently, by order dated 25.09.2019, the learned Trial



2025:DHC:2419



Court was pleased to discharge all accused persons on the ground that not even one eyewitness to the alleged incident was examined by the complainants in the pre-charge evidence and even if the testimony of all the witnesses examined during pre-charge evidence is accepted on its face value, no offences punishable under Sections 147/148/448 read with Section 149 of IPC would be made out. The relevant portion of the said order is set out below:

“...Arguments on charge have been heard by this court.

Ld counsel for the complainants has argued that in view of the testimony of the complainants Preetam Singh recorded on 07.07.1997, Jasbir Singh recorded on 05.07.1997 and of Gurvinder Singh s/o Preetam Singh recorded on 05.07.1997 it is clear that the accused persons have committed the offences punishable u/s 147/148/448 read with section 149 IPC and accordingly they are required to be charged for the said offences and prosecuted as per law. It is further stated that by examining the witnesses from the police department to prove the various complaints made to the police on behalf of the complainants against the accused persons, by examining the witnesses from postal department and by examining the kerosene oil supplier, the complainants have satisfactorily established their case that they were in possession of the property mentioned above while they were dispossessed by the accused persons. It is stated that by examining Sh. Hari Nihal Singh, the complainants have also established their case by producing an independent witness.

On the other hand Ld Defence counsel for the accused persons have prayed for discharge of the accused persons stating that in the entire pre charge evidence the complainants have not examined even a single witness nor have produced any documentary material from which prima facie case can be found to have been made so as to justify the framing of charge against the accused persons or any of them.

The Hon’ble High Court of Delhi in the case titled Satbir Dalal & Ors Vs. State (GNCTD) CrI. Rev. P. 678/2015 and CrI. M.A. 15667/15 decided on 14.12.2019 has observed that it is a settled position of law that for framing a charge not only



suspicion but grave suspicion is required.

Section 245 of the Cr.PC provides for the discharge of an accused in the cases instituted otherwise than on police report it reads as follows:

245. When accused shall be discharged - *If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Nothing in this section be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.*

A bare reading of the said provision implies that if considering all the post summoning evidence of the complainant, it is found that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the accused should be discharged. In view of the language of the said provision it is clear that for the purpose of charge in a complaint case instituted otherwise than on police report, the evidence led before the summoning of the accused cannot be considered.

In the present case, not even a single eyewitness of the alleged incident has been examined in the evidence u/s 244 Cr.PC on behalf of the complainants. Even if the testimony of all the witnesses mentioned above is accepted on its face value, no case for the offences punishable u/s 147/148/448 r/w Section 149 IPC is made out. All the witnesses as mentioned above, except the witness Hari Nihal Singh are concerned with maintenance of official record in one department or the other and were neither present at the spot at the time of the incident nor have deposed anything regarding commission of the alleged offences. The testimony of Hari Nihal Singh relating to the alleged offence is at the best hearsay. The same in no manner is sufficient to hold that the testimony brings forth a prima facie case much less a grave suspicion against the accused persons. The complainants have failed to establish a prima facie case sufficient to charge the accused persons.

In view of the above this court discharges the accused persons in the present case. The accused persons including accused Om Prakash are directed to furnish bail bond in the sum of Rs.10,000/- each with one surety of like amount as per



2025:DHC:2419



section 437A Cr.PC. Bail bond furnished perused and accepted...”

7. Aggrieved by the same, the complainants had preferred a revision petition before the learned Sessions Court. However, the same was also dismissed by way of the impugned order dated 29.11.2021. The relevant portion of the impugned order is set out below:

“17. I have heard the Ld. Counsels for the parties and have perused the record of the Ld. Trial Court. I have also gone through the written submissions filed on behalf of the petitioner carefully. The Ld. Trial Court vide the impugned order dated 25.09.2019 has observed that not a single eye-witness of the alleged incident was examined by the complainants at pre-charge evidence under section 244 of the Cr.P.C. and that the statements of the witnesses examined at pre-charge stage do not make out any case for framing of charge for the offences under sections 147/148/448 read with section 149 of the IPC.

18. Sh. R.S. Juneja, Ld. Counsel for the petitioners had argued that the evidence referred to under section 244 of the Cr.PC will cover in its ambit not only evidence recorded post-summoning of the accused persons but also evidence recorded at the pre-summoning stage. For this purpose he relied on the provisions of section 80 of the Indian Evidence Act.

19. The question regarding the issue as to whether evidence recorded at the pre-summoning stage can be read as evidence for the purposes of section 244 of the Cr.PC. for considering framing of charge was considered by the Hon'ble Supreme Court in the case of Sunil Mehta v. State of Gujarat reported in (2013) 9 SCC 209 in which the Hon'ble Supreme Court was pleased to hold as under: -

“12. Sections 244 to 246 leave no manner of doubt that once the accused appears or is brought before the Magistrate the prosecution has to be heard and all such evidence as is brought in support of its case recorded. The power to discharge is also under Section 245 exercisable only upon taking all of the evidence that is referred to in Section 244, so also the power to frame charges in terms of



Section 246 has to be exercised on the basis of the evidence recorded under Section 244. The expression "when such evidence has been taken" appearing in Section 246 is significant and refers to the evidence that the prosecution is required to produce. in terms of Section 244(1) of the Code. There is nothing either in the provisions of Sections 244, 245 and 246 or any other provision of the Code for that matter to even remotely suggest that evidence which the Magistrate may have recorded at the stage of taking of cognizance and issuing of process against the accused under Chapter XV tantamounts to evidence that can be used by the Magistrate for purposes of framing of charges against the accused persons under Section 246 thereof without the same being produced under Section 244 of the Code. The scheme of the two Chapters is totally different. While Chapter XV deals with the filing of complaints, examination of the complainant and the witnesses and taking of cognizance on the basis thereof with or without investigation and inquiry, Chapter XIX Part B deals with trial of warrant cases instituted otherwise than on a police report. The trial of an accused under Chapter XIX and the evidence relevant to the same has no nexus proximate or otherwise with the evidence adduced at the initial stage where the Magistrate records depositions and examines the evidence for purposes of deciding whether a case for proceeding further has been made out, All that may be said is that evidence that was adduced before a Magistrate at the stage of taking cognizance and summoning of the accused may often be the same as is adduced before the court once the accused appears pursuant to the summons. There is, however, a qualitative difference between the approach that the court adopts and the evidence adduced at the stage of taking cognizance and summoning the accused and that recorded at the trial. The difference lies in the fact that while the former is a process that is conducted in the absence of the accused, the latter is undertaken in his presence with an opportunity to him to cross-examine the witnesses produced by the prosecution.

17. Suffice it to say that evidence referred to in Sections 244, 245 and 246 must, on a plain reading of the said provisions and the provisions of the Evidence Act, be admissible only if the same is produced and, in the case of documents, proved in accordance with the procedure



established under the Evidence Act which includes the rights of the parties against whom this evidence is produced to cross-examine the witnesses concerned.

18. Secondly, because evidence under Chapter XIX(B) has to be recorded in the presence of the accused and if a right of cross-examination was not available to him, he would be no more than an idle spectator in the entire process. The whole object underlying recording of evidence under Section 244 after the accused has appeared is to ensure that not only does the accused have the opportunity to hear the evidence adduced against him, but also to defend himself by cross-examining the witnesses with a view to showing that the witness is either unreliable or that a statement made by him does not have any evidentiary value or that it does not incriminate him. Section 245 of the Code, as noticed earlier, empowers the Magistrate to discharge the accused if, upon taking of all the evidence referred to in Section 244, he considers that no case against the accused has been made out which may warrant his conviction. Whether or not a case is made out against him, can be decided only when the accused is allowed to cross-examine the witnesses for otherwise he may not be in a position to demonstrate that no case is made out against him and thereby claim a discharge under Section 245 of the Code. It is elementary that the ultimate quest in any judicial determination is to arrive at the truth, which is not possible unless the deposition of witnesses goes through the fire of cross-examination. In a criminal case, using a statement of a witness at the trial, without affording to the accused an opportunity to cross-examine, is tantamount to condemning him unheard. Life and liberty of an individual recognised as the most valuable rights cannot be jeopardised leave alone taken away without conceding to the accused the right to question those deposing against him from the witness box.

19. Thirdly, because the right of cross-examination granted to an accused under Sections 244 to 246 even before framing of the charges does not, in the least, cause any prejudice to the complainant or result in any failure of justice, while denial of such right is likely and indeed bound to prejudice the accused in his defence. The fact that after the court has found a case justifying framing of charges against the accused, the accused has a right to cross-examine the prosecution witnesses under Section 246(4



does not necessarily mean that such a right cannot be conceded to the accused before the charges are framed or that Parliament intended to take away any such right at the pre charge stage.”

(emphasis supplied)

20. Thus, in view of the law laid down by the Hon'ble Supreme Court in the case of Sunil Mehta (supra), evidence recorded at the pre-summing stage against the accused cannot be used for purposes of framing of charges against the accused persons under Section 246 of the CrPC without the same being produced under Section 244 of the Code and that what can be considered by the court for the purposes of discharge or framing of charge is the evidence recorded at the pre-charge stage under section 244 of the Cr.P.C.

26. This court has referred to the statements of the witnesses examined at the pre-charge stage under section 244 of the Cr.PC. None of them are eye-witnesses to the alleged incident of 18.04.1992 when the accused persons are alleged to have trespassed into the property of the complainants / petitioners. Hence, the finding recorded by the Ld. Trial Court vide the impugned order dated 25.09.2019 to the effect that the witnesses examined under section 244 of the Cr.P.C. are not eye-witnesses to the incident is borne out from the record of the Ld. Trial Court.

27. It had been submitted by Sh. R.S. Juneja, Ld. Counsel for the petitioners that the statements of the parties including the accused persons recorded in the SEM Court in proceedings under section 107/151 of the Cr.P.C. substantiated the allegations of the petitioners and that the same could be looked into by this court. Section 33 of the Evidence Act enables a court to consider evidence given by a witness in a judicial proceeding or before any person authorized by law to take it in a subsequent judicial proceeding or in a later stage of the same judicial proceeding subject to fulfillment of the conditions contained therein. It had been submitted by Sh. K.K. Gambhir, Ld. Counsel for the respondents that evidence recorded in the SEM Court cannot be considered under section 33 of the Evidence Act as the court of SEM does not conduct any judicial proceeding within the meaning of section 33 of the Evidence Act. He had relied upon the judgment of the Hon'ble High Court in the case of Aldanish Rein Vs State of NCT of



Delhi (supra).

28. In the case of Aldanish Rein Vs State of NCT of Delhi (supra) the Hon'ble Division Bench of the Hon'ble High Court was pleased to hold that the nature of proceedings under section 107 of the Cr.P.C. held by the court of SEM was an enquiry and not a trial. It was further held that the court of SEM are not Judicial Magistrates and are invariably police officers who also functions as ACPs. Thus, in view of the said observations of the Hon'ble High Court, it cannot be said that the statements recorded by the court of SEM fall within the meaning of "evidence given by a witness in a judicial proceeding" under section 33 of the Evidence Act. Therefore, no reliance can be placed by the petitioners on the proceedings and record of the court of the SEM.

29. I may also note that the record of the Ld. Trial Court reveals that pre- summoning evidence was closed by the complainants on 07.07.1997. By order dated 02.07.2001, accused persons / respondents were summoned by the Ld. Trial Court. Pre-charge evidence was finally closed by the petitioners / complainants on 13.09.2019. In between, the complainant no. 1 Pritam Singh is stated to have died in September, 2010 while complainant no. 2 Jasbir Singh is stated to have died in November, 2016. Gurvinder Singh, the other son of Pritam Singh, initially, examined as CW-29 at pre-summoning stage, was not examined as a witness at the pre-charge stage. This is therefore not a case where the complainant did not have opportunity to examine eye-witnesses of the alleged incident at the pre-charge stage. During the course of arguments, Ld. Counsel for the respondents had taken this court through the record of the Ld. Trial Court which indicates filing of multiple petitions by the petitioners / complainants praying for transfer of their complaint case from the court of one Ld. Presiding Officer to another. Be that as it may, for the reasons best known to the complainants they failed to examine themselves as witnesses at the pre-charge stage under section 244 of the Cr.P.C. which remained open from the year 2001 till the year 2019 with the complainant with the complainant no. 1 being alive till September, 2010 and the complainant no. 2 being alive till November, 2016.

30. Hence, for the reasons recorded above, there was no evidence on the record of the Ld. Trial Court under section 244 of the Cr.P.C. to frame charge against the respondents accused



2025:DHC:2419



persons for the offences under sections 147/148/448 of the IPC read with section 149 of the IPC. The impugned order dated 25.09.2019 does not suffer from any infirmity warranting interference in revisional jurisdiction. This revision petition has no merit and is therefore dismissed.”

8. The petitioner i.e. legal representative of the original complainant Sh. Pritam Singh, has preferred the present petition to assail the legality of the impugned order.

9. The learned counsel for the petitioner contended that after recording the pre-summoning evidence, the learned Trial Court had summoned all the accused persons for offence under Sections 147/148/448 read with Section 149 of IPC. It was submitted that at the pre-summoning stage, Ct. Yoginder Singh (CW-4) had been examined on 30.03.1996, and his deposition clearly established that the proceedings in the Kallandara were of P.S. Geeta Colony and had been dropped by the Sub-Divisional Magistrate (SEM) on 23.09.1992, and further that the Kallandara register did not contain any entry regarding the proceedings under Sections 107/151 Cr.P.C., and that the original. The learned counsel further argued that at the pre-charge stage, ASI Jagat Singh (CW-20) was examined on 17.05.2013, wherein he had erroneously deposed that the original record had been destroyed; however, the same had already been placed on record during the pre-summoning stage, as evident from the order dated 30.03.1996, wherein Ct. Yoginder Singh (CW-4) had brought the record before the court. It was thus submitted that the learned Trial Court was duty-bound to consider this record at the pre-



2025:DHC:2419



charge stage while deciding whether a *prima facie* case was made out against the accused. Additionally, it was argued that at the pre-charge stage, Rajan HC (CW-1) had been summoned and had produced a copy of FIR No. 97/1992 of P.S. Geeta Colony, which had already been exhibited as CW-1/A. The learned counsel contended that this FIR alone was sufficient to establish a *prima facie* case against the accused, as the FIR was registered on the basis of the statement of Rajan HC himself.

10. The learned counsel for the petitioner also submitted that Section 33 of the Indian Evidence Act, 1872, had no applicability to the present case, and the petitioner was not seeking to rely on the said provision in support of his challenge against the impugned order. The learned counsel also conceded that for the purposes of deciding the issue of charge, the evidence to be considered by the learned Trial Court must be strictly confined to the evidence recorded under Section 244 of Cr.P.C.

11. It was further contended that while the judgment relied upon by the learned Sessions Court contained observations regarding the inquisitorial nature of proceedings under Section 107 of Cr.P.C., the same was not applicable to the present case, since the said judgment primarily dealt with the scope and effect of Sections 107, 111, 116, and 151 of the Cr.P.C., as well as constitutional protections under Articles 20(3), 21, 22(1), and 39A. Similarly, the judgment in **Sashi Jena & Ors. v. Khadal Swain & Anr.**: AIR 2004 SC 1492 was also argued to be inapplicable, as it pertained to Section 33 of the Indian



Evidence Act, which the petitioner was not invoking in support of his case. Therefore, it was argued that the present petition be allowed.

12. This Court has **heard** arguments addressed by the learned counsel for the petitioner and has perused the material placed on record.

13. The grievance of the petitioner, in a nutshell, pertains to the discharge of accused persons by the learned Trial Court, on the ground that at pre-charge stage, no eyewitness was examined by the complainants in support of their case and thus, there was no evidence – sufficient enough – to frame charges against the accused persons.

14. This Court notes that the learned Sessions Court, in the impugned order, has dealt with an argument of the complainants raised therein, that the evidence recorded at the pre-summoning stage ought to be considered for the purpose of framing of charges under Section 246 of Cr.P.C. The complainants contended that the testimonies recorded prior to the summoning of the accused persons sufficiently established a *prima facie* case and should be read as evidence at the pre-charge stage also. However, relying on the decision of the Hon'ble Supreme Court in ***Sunil Mehta v. State of Gujarat***: (2013) 9 SCC 209, the learned Sessions Court was pleased to reject this contention. It was observed that as per the settled legal position, the evidence recorded at the pre-summoning stage cannot be used for framing of charges under Section 246 of Cr.P.C., unless the same has been produced and recorded afresh under Section 244 of Cr.P.C. i.e. during the pre-charge stage.



15. It is material to note that before this Court, the learned counsel for petitioner has conceded that the evidence to be considered by the Court for the purpose of framing of charge, i.e. during the pre-charge stage, is the only evidence which is recorded afresh under Section 244 of Cr.P.C.

16. A perusal of the impugned orders further reveals that the learned Sessions Court, after scrutinizing the statements of witnesses examined at the pre-charge stage, found that none of them were eye-witnesses to the alleged incident dated 18.04.1992, wherein the accused persons were alleged to have unlawfully trespassed into the complainants' property. Accordingly, the learned Sessions Court upheld the finding of the learned Trial Court in its order dated 25.09.2019, wherein it was held that the complainants had failed to produce direct evidence to substantiate the allegations.

17. This Court also takes note of the fact that when the present case was listed for hearing on 25.05.2022 before this Court, the learned counsel for the petitioner had argued that Section 33 of Indian Evidence Act was applicable in this case, however, the learned Trial Court had not appreciated the same. The argument of the learned counsel for the petitioner, as recorded in order dated 25.05.2022, is reproduced hereunder:

“2. Mr. A.K. Tripathi, learned counsel for the petitioner, submits that the courts below had overlooked the effect of Section 33 of the Indian Evidence Act as discussed by the Supreme Court in **Sashi Jena & others Vs. Khadal Swain & another**, AIR (2004) SC 1492, where the facts were the same, as in the present case. It is submitted that the situation had



2025:DHC:2419



arisen on account of the demise of the eye witnesses, but who had been examined and cross-examined before the learned Sub-Executive Magistrate and which statements had been brought before the learned Trial Court during precharge evidence, but have been overlooked.”

18. Thus, as evident from the aforesaid, it was the argument of the learned counsel for the petitioner that the effect of Section 33 of Indian Evidence Act was overlooked by the Courts below. In this regard, this Court is of the opinion that the learned Sessions Court has specifically dealt with this argument and has observed that Section 33 enables a court to consider evidence tendered by a witness in a judicial proceeding or before any person authorized by law to take it in a subsequent judicial proceeding or in a later stage of the same judicial proceeding – subject to fulfillment of the conditions contained therein. One such condition is the right of adverse party to cross-examine the witness. The learned Sessions Court took note of the decision of the Division Bench of this Court in ***Aldanish Rein v. State of NCT of Delhi***: 2018 SCC OnLine Del 12207, wherein it was held that the nature of proceedings under Section 107 of Cr.P.C. held by the court of SEM was an enquiry and not a trial; and that the courts of SEM are not equivalent to the Courts of Judicial Magistrates and are invariably police officers who also function as ACPs. In this Court’s opinion, it was correctly held by the learned Sessions Court that the statements recorded by the court of SEM do fall within the meaning of “evidence given by a witness in a judicial proceeding” under Section 33 of the Indian Evidence Act, and



therefore, no reliance can be placed by the petitioner on the proceedings and record of the court of the SEM.

19. Moreover, as noted in order dated 25.05.2022, the learned counsel for petitioner had relied on decision of the Hon'ble Supreme Court in **Sashi Jena & Ors. v. Khadal Swain & Anr: AIR (2004) SC 1492** and it was contended that the said decision was passed in a similar set of facts. However, a reading of the said decision makes it evident that the facts therein were entirely different from those of present case. The following three essentials of Section 33 were set out by the Hon'ble Supreme Court: (i) that the earlier proceeding was between the same parties; (ii) that the adverse party in the first proceeding had the right and opportunity to cross examine; and (iii) that the questions in issue in both the proceedings were substantially the same, and in the absence of any of the three prerequisites afore-stated, Section 33 of the Act would not be attracted. It was held by the Hon'ble Supreme Court in the given facts, that statement of a witness recorded during inquiry under Section 202 of Cr.P.C. is not admissible in evidence under Section 33 of Indian Evidence Act since during such an inquiry, an accused has no right – much less opportunity – to cross examine a prosecution witness. Concededly, in the proceedings before the SEM in the present case, there was no opportunity of cross-examination of the witness. Thus, clearly, these arguments can be of no help to the petitioner, and are accordingly rejected.

20. However, on the last date of hearing, the learned counsel for



the petitioner, in contrast to the aforesaid, had argued that he was not relying on provisions of Section 33, but on Section 80 of Indian Evidence Act. He argued that as per Section 80, the learned Trial Court could have taken into consideration the records of proceedings before SEM, which were produced before the Court at pre-charge stage, to frame charges against the accused persons.

21. Section 80 of the Indian Evidence Act deals with ‘presumption as to documents produced as record of evidence’. In this regard also, it is relevant to note that at the stage of pre-charge evidence, photocopies of the records pertaining to DD entries recorded at the time of incident and *kalandra* proceedings were produced and it has been conceded by the learned counsel for the petitioner himself that the original records had been destroyed by the time the pre-charge evidence was recorded. Thus, no original documents were available before the learned Trial Court for presuming the genuineness of the said documents. Therefore, this argument of the petitioner is also rejected.

22. The learned Sessions Court, in the impugned order, has also observed that the complainants had ample opportunity to examine relevant witnesses, including themselves, at the pre-charge stage under Section 244 of Cr.P.C., yet they had failed to do so. The record of the learned Trial Court in this case indicates that the complainants had closed their pre-summoning evidence on 07.07.1997, and the accused persons were summoned *vide* order dated 02.07.2001. Despite, unfortunately the pre-charge evidence stage remaining



pending before the learned Trial Court, for nearly two decades, until its closure on 13.09.2019, neither of the complainants – Pritam Singh and Jasbir Singh – had appeared as witnesses before their respective demise in 2010 and 2016.

23. It is also apposite to note that Sh. Gurvinder Singh, son of Sh. Pritam Singh, who had been examined as CW-29 at the pre-summoning stage, was also not examined as a witness at the pre-charge stage. The learned Sessions Court also observed that this was not a simpliciter case where the complainants were denied an opportunity to examine the eye-witnesses at the stage of recording pre-charge evidence. Additionally, the record revealed that the complainants had filed multiple transfer petitions seeking change of the Presiding Officers, yet, for reasons best known to them, they did not avail the opportunity to examine key witnesses, including themselves, during the prolonged pre-charge evidence stage. As a result, neither the complainants themselves, nor any other eye-witness of the alleged incident was examined as a witness during the pre-charge stage.

24. This factual position, and the observations/findings of the learned Sessions Court in this regard, have not been disputed or assailed by the learned counsel for the petitioner.

25. Therefore, in view of the foregoing discussion, this Court finds no ground to interfere with the impugned order passed by the learned Sessions Court, *vide* which the order of learned Trial Court, discharging the accused persons, was upheld.



2025:DHC:2419



26. Accordingly, the present petition is dismissed.
27. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 8, 2025/A