



2025:DHC:9795



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.11.2025

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CRL.REV.P. 22/2025 & CRL.M.A. 1899/2025

PARDEEP KUMAR & ORS.

..... Petitioners

versus

STATE OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Dr. Rakesh Gosain, Mr. Nitin S. Vashisth,
Mr. Sanskar Aggarwal, Mr. Dev Chawala,
Mr. Mayank Sharma & Mr. Sarvesh Raj,
Advs.

For the Respondent : Ms. Richa Dhawan, APP for the State for
the State.
SI Sanjeev Kumar, PS Special Cell & SI
Ashok Kumar, Special Staff Rohini.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed challenging the order on charge dated 20.09.2024 (hereafter '**impugned order on charge**'), passed by the learned Trial Court in SC No. 283/19 arising out of FIR No. 42/2018 ('**FIR**'), registered at Police Station Special Cell.



2. By the impugned order on charge, the learned Trial Court framed charges for the offences under Sections 115/120B read with Section 302 of the Indian Penal Code, 1860 ('IPC') and Section 25 of the Arms Act, 1959 against the petitioners and the accused Savinder.

3. The brief facts of the case are as follows:

3.1. On 19.04.2018, the FIR was registered on the basis of lawful interception of some mobile numbers, wherein some suspicious calls were intercepted. It was found that one Rajesh *alias* Kala, who was lodged in jail, was planning to get the main witness, namely, Vijay, in the case against him murdered. The said witness was the brother of the deceased victim in the case registered against the accused Rajesh. Allegedly, according to the calls, the accused persons were planning to kill Vijay at the behest of the accused Rajesh. In this regard, informers were deployed. On 19.04.2018, information was received that some boys from the village of the accused Rajesh were planning to kill the witness Vijay and that the said persons would assemble at Ghogha Chowk, Narela Bawana Road for the said purpose. On the basis of the secret information, at around 11:45 AM, Petitioner Nos. 1 to 3 were apprehended. One pistol and 10 live cartridges were recovered from the petitioner Pardeep, one desi katta and one live cartridge was recovered from the petitioner Sandeep as well as the petitioner Sanjeet respectively.



3.2. During investigation, the arrested accused persons allegedly disclosed that they were waiting for the petitioner Vikas and Savinder, who were bringing the vehicle for committing the murder and that the said persons were also in contact with the accused Rajesh. The petitioner Vikas subsequently surrendered before the Court.

3.3. During the course of proceedings, the main accused Rajesh expired and the proceedings were abated against him.

3.4. By the impugned order, the learned Trial Court found that there is sufficient material against the accused persons that they had hatched a conspiracy to kill the witness–Vijay. It was also noted that Petitioner Nos. 1 to 3 were found in possession of illegal firearm and ammunition. This led to charges being framed against the petitioners and the accused Savinder for the offences punishable under Sections 115/120B read with Section 302 of the IPC and Section 25 of the Arms Act, 1959.

3.5. Aggrieved by the same, the petitioners filed the present petition.

4. The learned counsel for the petitioners submitted that charges have been erroneously framed against the petitioners on the basis of assumptions and conjectures.

5. He submitted that charges could not have been framed against the petitioners for the substantive offence under Section 302 of the



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IPC since the allegation only relates to abetment and conspiracy to commit the offence, and no murder actually took place.

6. He submitted that the co-accused Rajesh had no mobile to contact with the other accused persons and the phone which was allegedly used by the deceased co-accused Rajesh belongs to one Chander Dev, who revealed during the investigation that he never knew or came into contact with the said co-accused. He submitted that no mobile or sim was recovered from the barrack in which the co-accused Rajesh was lodged which casts a shadow on the case of the prosecution.

7. He further submitted that the police officials of the Special Cell are hiding the true facts of the present case in collusion with the prosecution. He submitted that the petitioner Pardeep was taken from his house on the intervening night of 18.04.2018-19.04.2018 on the pretext of repairing a car as the said petitioner is a car mechanic. He submitted that in the morning, the police officials who had taken the petitioner Pardeep surrounded the house of the petitioner Vikas to abduct him, however, he could not be found there. He submitted that at around 11:46AM, the petitioner Sandeep was also taken from his house, which is recorded in the CCTV camera. He submitted that the recoveries were planted on the accused persons and Petitioner Nos. 1 to 3 were apprehended empty handed.



8. He submitted that no adverse inference can be drawn against the accused persons for not giving their voice samples as no person can be compelled to be a witness against himself.

9. *Per contra*, the learned Additional Public Prosecutor fairly submitted that there appears to be an error in the impugned judgment insofar as the substantive charge for the offence under Section 302 of the IPC has been framed. She, however, submitted that the accused persons cannot be discharged entirely in the present case and the evidence is sufficient to warrant trial.

ANALYSIS

10. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the material on record. At the same time, it is well-settled that the Court may interfere if the allegations are patently absurd and the basic ingredients of the offence, for which the charge is framed, are not made out [Ref. *Amit Kapoor v. Ramesh Chander* : (2012) 9 SCC 460].

11. Since the petitioners are essentially aggrieved by non-framing of charges for some offences, it will be apposite to succinctly discuss the law with respect to framing of charge and discharge. The Hon'ble



Apex Court in ***Union of India v. Prafulla Kumar Samal : (1979) 3 SCC 4***, dealt with the scope of enquiry a judge is required to make with regard to the question of framing of charges. *Inter alia*, the following principles were laid down by the Court:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(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.

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*(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.***

(emphasis supplied)

12. 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 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)

13. 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.”*

(emphasis supplied)

14. 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. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

15. In the present case, the petitioners have primarily agitated the issue of the charge for the offence under Section 302 of the IPC being framed against the accused persons. It is argued that the learned Trial Court has gravely erred in framing charge for the substantive offence under Section 302 of the IPC, even though, no offence of murder ever took place in pursuance of the alleged conspiracy.

16. It is pertinent to note that the petitioners have not been charge sheeted for the offence under Section 302 of the IPC and they have only been charge sheeted for the offences under Sections 115/120B of the IPC instead for their alleged collusion.

17. A bare perusal of the impugned order reflects that charges have been framed against the accused persons for the offences under Sections 115/120B *read with* Section 302 of the IPC and Section 25 of the Arms Act, 1959. It is apparent from the impugned order on charge that the learned Trial Court has framed the charge in such a manner due to the underlying offence for which the parties allegedly entered into criminal conspiracy was murder.



18. The short question before this Court for consideration is as to what is the correct manner for framing the charges for the aforesaid offences.

19. While Section 115 of the IPC deals with abetment of an offence punishable with death or imprisonment for life when such offence is not committed in pursuance of the abetment, Section 120B of the IPC deals with the punishment for criminal conspiracy to commit such an offence which is punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards. Before proceeding further, this Court considers it apposite to take note of the concerned statutory provisions. The concerned provisions are reproduced hereunder:

“115. Abetment of offence punishable with death or imprisonment for life—if offence not committed.—Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm be done in consequence.—and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

120-B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. ‘



(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

20. Conspiracy to commit an offence is an entirely independent offence and is by itself distinct from the offence that is so sought to be committed in pursuance of the said conspiracy. In the case of ***Bilal Hajar @ Abdul Hameed v. State Rep. by the Inspector of Police : Criminal Appeal No. 1305/2008***, the Hon’ble Apex Court had emphasised on the ingredients to constitute an offence of criminal conspiracy and emphasised on the separate identity of the same. The relevant portion is reproduced hereunder:

*“30. Reading of Section 120-A and Section 120-B, IPC makes it clear that an offence of “criminal conspiracy” is a **separate and distinct offence**. Therefore, in order to constitute a criminal conspiracy and to attract its rigor, two factors must be present in the case on facts: **first, involvement of more than one person and second, an agreement between/among such persons to do or causing to be done an illegal act or an act which is not illegal but is done or causing to be done by illegal means.***

31. The expression “criminal conspiracy” was aptly explained by this Court in a case reported in Major E.G. Barsay vs. State of Bombay (1962) 2 SCR 195. Learned Judge Subba Rao (as His Lordship then was and later became CJI) speaking for the Bench in his distinctive style of writing said:

“31..... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts.”



32. *Therefore, in order to constitute a conspiracy, meeting of mind of two or more persons to do an illegal act or an act by illegal means is a must. In other words, it is sine qua non for invoking the plea of conspiracy against the accused. However, it is not necessary that all the conspirators must know each and every detail of the conspiracy, which is being hatched and nor it is necessary to prove their active part/role in such meeting.*

33. *In other words, their presence and participation in such meeting alone is sufficient. It is well known that a criminal conspiracy is always hatched in secrecy and is never an open affair to anyone much less to public at large.*

34. *It is for this reason, its existence coupled with the object for which it was hatched has to be gathered on the basis of circumstantial evidence, such as conduct of the conspirators, the chain of circumstances leading to holding of such meeting till the commission of offence by applying the principle applicable for appreciating the circumstantial evidence for holding the accused guilty for commission of an offence. (See also Baldev Singh vs. State of Punjab [2009 (6) SCC 564].”*

(emphasis supplied)

21. In case the underlying substantive offence which is the subject matter of such conspiracy is actually committed, the same would be the subject matter of a separate charge altogether [Ref. **Madan Lal v. State of Punjab : 1967 SCC OnLine SC 34**]. As held in **Bilal Hajar @ Abdul Hameed v. State Rep. by the Inspector of Police** (*prima facie*), to substantiate a charge for criminal conspiracy, the primary requirement is the meeting of minds of more than one person to break the law.

22. Similarly, the offence of abetment is a separate and complete offence which is not helmed on the actual commission of the underlying substantive offence. Rather, one of the key ingredients to



constitute the aforesaid offence is that the offence which is sought to be abetted is *not* committed as a consequence of the abetment. The said offence is thus premised on the underlying offence, which is sought to be abetted, not being committed in the consequence of the abetment.

23. As the aforesaid offences relate to *separate* and independent offences, in the opinion of this Court, the learned Trial Court has erred in framing charges for the same in conjunction with the offence under Section 302 of the IPC. The issue in the impugned order thus appears to be one of inadvertent error in nomenclature, where the learned Trial Court has erroneously coupled the offences of abetment and conspiracy with murder. The language of the impugned order is clear in this respect. While the criminal conspiracy as well as abetment may have been for committing the offence of murder, however, the same does not justify framing a separate charge for the said offence, which was not committed.

24. Insofar as the merits of the case are concerned, although not much emphasis was laid on the same, arguments were raised that no charge could have been framed for the offence under Section 115 of the IPC as the same only implicates the individual who abets the commission of the offence. It was argued that in the present case, the abettor would have been the accused Rajesh and not the accused persons. It was also argued on behalf of the petitioners that the recoveries were planted on the accused persons and the entire



prosecution story is concocted as Petitioner Nos. 1 to 3 had already been apprehended by the police officials *prior* to their arrest as per the record. It is also argued that the absence of any recovery of mobile or sim from the barrack of the accused Rajesh weakens the case of the prosecution. Certain photographs from CCTV footage were also relied upon.

25. As noted above, Section 115 of the IPC is made out against “whoever abets” the commission of the substantive offence, if such offence is not committed in consequence of the abetment. Section 107 of the IPC defines abetment and provides that abetment is not limited to mere instigation but also conspiracy for doing the thing, if an act takes place in pursuance of the conspiracy, and intentionally aiding the doing of that thing. The said provision reads as under:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

26. In the present case, it is the case of the prosecution that information was received that the accused persons will gather at



Ghogha Chowk from where they will depart for commission of crime for which they have a lot of illegal weapons as well. Pursuant to the same, a raid was conducted and Petitioner Nos. 1 to 3 were apprehended with weapons. Allegedly, the petitioner Vikas along with another accused were bringing the vehicle for commission of offence. The arrest of Petitioner Nos. 1 to 3 and recovery of weapons which were to be allegedly used in pursuance of the conspiracy coupled with the lawfully intercepted phone calls make out a *prima facie* case against the accused persons. Abetment in the present case is not sought to be made out by virtue of instigation *per se* so as to negate the case of the prosecution against the accused persons.

27. Furthermore, although no recovery was effected from the barrack, the prosecution has adduced the certified CDR and CAF of the intercepted calls, which make the base of the prosecution. It is pertinent to note that at the stage of framing of charges, this Court cannot venture into the probability of conviction or sufficiency of evidence.

28. The prosecution has intercepted *four* calls which involve conversations between *all* the accused persons. *Prima facie*, considering the extracted excerpts of the calls as laid in the charge sheet, the same cast grave suspicion against the petitioners, especially since they apparently also confirm the illegal weapons recovered from the accused. While the effect of the accused persons not giving their voice samples will be tested during the course of trial, it cannot be



ignored that three of the petitioners were apprehended with illegal weapons and the record of meeting of main accused Rajesh reflects that the accused had also attended the meeting. Mobile numbers used in the conversations have also been alleged to have been recovered from Petitioner Nos. 1 to 3. Even if the conspiracy did not result in murder of the witness Vijay, the same would not exonerate the petitioners. While the motive may have stemmed from the accused Rajesh, who has since expired, the accused persons were also equally involved in the planning of the murder.

29. The assertions in relation to false implication appear to be in the nature of defence and the veracity of the material relied upon by the petitioners in support of the same, including the alleged photographs of the CCTV photographs, cannot be ascertained at this juncture. The same would be a matter of trial.

30. In view of the aforesaid discussion, the impugned order is set aside and the matter is remitted to the learned Trial Court for passing order on charge afresh after considering the observations as made in the present order.

31. Although no argument was raised in this regard, it is pertinent to note that charge for offence under Section 25 of the Arms Act, 1959 has been framed against the petitioner Vikas as well, although no recovery was effected from him. This Court considers it apposite to



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direct the learned Trial Court to take the said aspect into consideration as well.

32. The present petition is disposed of in the aforesaid terms.

33. A copy of this order be sent to the learned Trial Court for necessary compliance.

AMIT MAHAJAN, J

NOVEMBER 10, 2025 / "SK"