



\$~50 & 51

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 488/2015

ANIL KUMAR SAINI & ANR

.....Petitioners

Through: Mr.Akshay Bhandari and Mrs. Shriya
Gilhotra, Advocates (VC)

versus

THE STATE (GOVT OF NCT DELHI)

.....Respondent

Through: Mr.Pradeep Gahalot, APP for the State
alongwith SI Narender Singh, P.S.-
Chandni Mahal

51

+ CRL.REV.P. 541/2015 & CRL.M.A. 12359/2015

JALALUDDIN

.....Petitioner

Through: Mr.Vishal Raj Sehijpal, Mr.Farooq
Chaudhary, Ms. Nahid and
Ms.Priyanka Handa, Advocates

versus

STATE GOVT OF NCT DELHI

.....Respondent

Through: Mr.Pradeep Gahalot, APP for the State
alongwith SI Narender Singh, P.S.-
Chandni Mahal

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

14.07.2025

%

1. This hearing has been done through hybrid mode.
2. The present petitions under Sections 397/401 of the CrPC read with Section 482 of the CrPC have been filed assailing the impugned order on charge dated 27.05.2015 passed by learned ASJ, Additional Sessions Judge-05, Central, Tis Hazari Courts, Delhi, in Sessions Case No. 47/15, arising out



of FIR No. 86/2011, under Sections 304/337/338/120B/34 of the IPC, registered at Police Station Chandni Mahal, whereby charges have been framed against the petitioners for the offences punishable under Sections 304/325/323/34 of the IPC.

3. The case of the prosecution is that at about 08:00 PM, on 27.09.2011, a PCR call was received regarding collapse of House No. 833, Chandni Mahal and burial of several persons under the debris. Thereafter, ASI Pritam Singh reached the spot and found that there was an under construction pillar at one portion of the building and the remaining portion of the building had collapsed. Rescue operations were started and the injured persons were sent to LNJP Hospital. 23 persons were injured and 7 died in the said incident. MLC of the injured as well as deceased persons were collected and subsequently, the present FIR was registered. During the course of the investigation, articles recovered from the debris were recovered and statements of the witnesses and injured persons were recorded.

4. The investigation revealed the petitioners had purchased the aforesaid property from one Sunita, and further gave the contract to Haza Jalaluddin, *i.e.*, the petitioner in CRL.REV.P. 541/2015 to demolish/construct the aforesaid building, however, no permission was taken from the MCD nor any site plan was approved by the MCD. It is further stated that no suggestion from any structural/civil engineer was taken during the process of demolition. The investigation further revealed that a notice dated 16.09.2011 was issued to the petitioners, Anil Saini and Dharmender Grover, and a notice was served to petitioner, Jalaluddin, at the spot on 25.09.2011 directing to stop the construction/demolition. Despite the service of notice, the construction work at the site was not stopped which had caused the incident. After the



completion of investigation, chargesheet was filed before the Court of competent jurisdiction. Thereafter, charges were framed for the offences under Sections 304/325/323/34 of the IPC against the petitioners. The said impugned order on charge dated 27.05.2015 has been challenged by way of the present petition.

5. Learned counsel for the petitioners, at the very outset, submits that the matter may be remanded back to learned Trial Court as the learned ASJ while passing the impugned order on charge has not applied mind as to how the charge for the offence punishable under Section 304 of the IPC has been made out in the facts and circumstances of the present case. It is further submitted that the learned ASJ had not considered the report dated 23.11.2011 submitted by the engineers of the MCD. He further submits that the impugned order on charge is silent regarding the said report of MCD engineers. The said report dated 23.11.2011 reads as under: -

“May please refer to the letter No. 1727/ACP/DIU/Central Distt. Dated 17.11.2011. In this regard, it is submitted that on 27.09.2011 at 8.05 p.m. a complaint was received in the Zonal Control Room regarding collapse of the above said property. MCD Officials reached at site and it was found that the above said property was collapsed. On local enquiry it was revealed that the said property was more than 75 years old and was structurally weak and owner I occupier of ground floor was trying to change the doors and during the exercise the entire building crashed and came down. However, the adjacent property No. 833, Chandni Mahal, was earlier inspected and found that owner occupier was dismantling the old structure without any prior approval from M.C.D. and the work was stopped by MCD officials instantly. Accordingly, work stop notice was issued vide No. EE (B)/CZ/501, dated 16.09.2011 on the assumption that construction can be raised by owner/Builder. SHO, Chandni Mahal was also informed by way of work stop notice that dismantling work has been stopped by M.C.D. The Property No. 833, Collapsed due to only because of very old structure.”



6. It is also submitted that even the Crime Scene Report dated 16.11.2011 which was part of the charge-sheet has not been duly examined in proper perspective.

7. Learned APP for the State fairly submits that the perusal of the impugned order would show that there is no discussion as to how the offence punishable under Section 304 of the IPC has been made out in the present case.

8. Heard learned counsels for the parties and perused the record.

9. Learned ASJ while directing the framing of charge against the present petitioners *vide* order dated 27.05.2015 had passed the following order: -

“1. Vide this order I shall dispose of the contentions put forth by learned counsels for accused persons and that of learned Addl. PP for the State on the point of charge.

2. It is the case of the prosecution that at about 8.00pm on 27.09.2011 a PCR call was received regarding collapse of House No.833, Chandni Mahal and burial of several persons under the debris. Said call was reduced into writing vide DD No.30A and matter was initially investigated by ASI Pritam Singh who collected MLCS of injured persons as per which injured Mohd. Mustaq, Sajid, Mohd. Akib, Rafiqullah, Gaurav, Kumum and Suhaib sustained grievous injuries whereas injured Ms. Afiya, Mohd. Faiz, Ms. Sauma, Bijender, Mukesh, Ms. Sabiya, Ms. Munazia, Rameez, Shakir, Mohd Nasir, Dishan, Suresh, Firoz, Salman, Mohd. Abid and Hanif sustained simple injuries. IO also collected MLCS of 7 deceased namely Ms. Munni Devi, Ms. Fatima, Ms. Shaukat Be, Arshad, Ms. Tabbussam, Amand and that of one unknown.

3. During investigation it was revealed that accused Anil Kumar Saini and accused Dharmender Grover had entered into a sale-purchase agreement of a building of 70 sq. yards area at H. No.833, Chandni Mahal, Delhi with one Smt. Sunita Sharma on 14.07.11 by an agreement to sell/bayana as per which they paid Rs.15,40000/- to Smt. Sunita as token money and agreed to pay remaining amount of Rs.64,60000/- up to 14.11.2011.

4. Accused Anil Kumar and Dharmender Grover gave contract to accused Hazi Jalaludin @ Jalal, a builder to demolish that 70 yards



portion and to construct flats there. During the demolition and unauthorised construction at the 70 sq. yards portion, the adjacent building of 65 sq. yds area Collapsed and consequently aforementioned 7 persons lost their lives and 23 persons sustained injuries. During investigation it was also revealed that a notice of AE (building) Ward No.84, City Zone dt.16.9.2011 was issued to accused Anil directing him to stop construction/demolition of building with immediate effect. Accused Jalaluddin @ Jalal was also served with the same notice on 25.9.2011 but despite service, the work was not stopped which resulted into mishap.

5. It is argued on behalf of accused Anil and Dharmender that the property, where allegedly construction was going on due to which adjacent building collapsed, existed in the name of Smt. Sunita Sharma on the date of incident and that accused persons have nothing to do with the alleged construction. It is further contended by learned counsel for accused Anil and Dharmender that the Agreement to Sell/Bayana dated 14.7.2011 itself shows that only part payment/bayana was made for property No. 833, Chandani Mahal and the deal was to be concluded only after payment of remaining amount on or before 14.11.2011. It is also contended on behalf of accused Dharmender and Anil that since accused persons did not have right over the said property till the entire consideration amount was paid. they did not enter into any alleged agreement with accused Jallauddin for any demolition or construction which allegedly resulted into mishap.

6. It is argued on behalf of accused Jallaludin that he never entered into any agreement qua alleged demolition or alleged construction on property No. 833, Chandani Mahal with accused Anil Kumar and Dharmender and that no such agreement has been placed. Thus accused Jallauddin was not involved in construction and demolition of the said property.

7. Per contra it is argued by Leaned Addl. PP for the State there is sufficient material on record to show that accused Anil Kumar and Dharmender entered into agreement with accused Jallauddin for demolition and illegal construction on property No.833, Chandani Mahal due to which the adjacent building collapsed and consequently several persons died.

8. There is no force in the arguments putforth by learned counsels for the accused. The perusal of agreement dated 14.7.2011 executed between Smt. Sunita and accused Dharmender and Anil Kumar clearly shows that it was mutually agreed between the parties (Smt.



Sunita Sharma (hereinafter referred as first party) and accused Dharmendra Grover and accused Anil Kumar (hereinafter referred as second party) that **CONSTRUCTION RIGHT WILL BE WITH THE SECOND PARTY AND THE FIRST PARTY WILL NOT HAVE ANY RESPONSIBILITY DURING THE COURSE OF CONSTRUCTION OF THE SAID PROPERTY.**

9. Insertion of such clause in the agreement dated 14.7.2011 itself is sufficient enough to prima facie establish responsibility / accountability of accused Dharmender and Anil Kumar qua construction / demolition on property No.833 due to which the adjacent building collapsed and mishap took place.

10. The contention of learned counsel for accused Jallauddin that there is no document on record to show that accused Jallauddin was the builder or that he was carrying demolition, work and alleged illegal construction, is also devoid of any merit. Perusal of record clearly reveals that notice dated 16.9.2011 of AE (building) Ward No.84, City Zone was issued to accused Anil directing him to stop the construction with immediate effect and same notice was served to accused Jallauddin. Further as per statements of witnesses U/s 161 Cr.P.C. more particularly that of Mohd. Jakir and Islammuddin, owners of adjoining properties, it was accused Jallauddin who was carrying on demolition and construction work on property no.833 as contractor.

11. Further the perusal of the crime scene report dated 16.11.2011 filed by the FSL, reveals that northern portion of the building i.e. the portion under construction by the accused persons was found demolished and some new pillars were under construction. It was also observed that there were cracks on the remaining wall on the northern side. The vigilance report dated 23.3.2012 also supports the findings of the Crime Scene Report dated 16.11.11.

12. Otherwise also it is settled legal proposition that at the stage of framing of charge, Court is not required to scrutinize the material available on record meticulously.

13. The law is well settled that at the stage of the framing of charge, strong suspicion and a prima facie case is sufficient to frame charge. Otherwise also, at the stage of framing of charge the defence of the accused can not be considered. In case titled as **Rajendra Singh Sethia Vs. State CrI.M. (M) No.1090 of 1994, 1995 III AD (Delhi)162**, it is categorically mentioned in para 13 that "A Court of Law at the stage of framing of charge, would not go into the defence of the accused, if any, put forward by him and considering the same would not refuse to frame the charge as that is not the



proper stage to consider the defence which is to be examined at the time of the disposal of the case."

14. In the most recent judgment of the Hon'ble Supreme Court titled as State of Tamil Nadu Vs N. Suresh Rajan and Others reported as 2014 Crl. L.J. 1444, the principles of material required for framing of charge have been reiterated and it has been held that:

"True, it is that at the time of consideration of the applications for discharge, the court can not act as a mouth piece 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 on 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. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. V.State of Uttar Pradesh & Anr., AIR 2013 SC 52:(2012 AIR SW6171), in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra V.State (NCT of Delhi) (2008) 2 SCC 561: (AIR 2008 SC (Supp) 2014: 2008 AIR SCW 96): It is trite that at the stage of framing of charge the court is



required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At this stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At this stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

15. In **State of Orissa Vs. Saroj Sahoo 2006(1) Apex Criminal 63 (SC)** Hon'ble Supreme Court observed that -

"At the stage of framing of charge court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For this limited purpose Court can evaluate material and documents on record but it cannot appreciate evidence. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

16. In the case in hand accused persons neither sought prior permission of authorities concerned nor took due care and caution while executing alleged demolition and construction work due to which the mishap occurred. Even no site plan was got approved from MCD and no guidance of any structural / Civil Engineer was taken.

17. In view of the above observation, facts and circumstances of the case and case laws cited above, I am of the opinion that on the basis of the material available on record, **prima facie case for commission of offence punishable U/ss 304/325/323/34 IPC is made out against all the three accused. All accused be charged accordingly. However, observation made herein shall have no bearings on the merits of the case."**

10. Perusal of the aforesaid order shows that learned ASJ has not examined



as to how the facts of the present case would satisfy the ingredients for the charge of the offence punishable under Section 304 of the IPC.

11. Learned Trial Court, in the aforesaid order, apart from noting the fact that the petitioners had not sought the permission of concerned authorities and nor had taken due care while executing the alleged demolition, proceeded to frame charges for the offences punishable under Sections 304, 325, 323/34 of the IPC against the present petitioners. The aforesaid order is completely silent as to how the ingredients of Section 304 of the IPC as well as other Sections which are noted in the impugned order are satisfied in the facts of the present case. The impugned order relies on certain judgments of the Hon'ble Supreme Court with regard to parameters to be considered while passing an order on charge. There is no dispute to the said proposition, however, the law is also well-settled that the learned Trial Court while passing an order on charge has to be *prima facie* satisfied with regard to satisfaction of the ingredients of the offence alleged against the concerned accused. In the present case, there is absolutely no discussion with regard to the ingredients of Sections 304, 325, 323/34 of the IPC in the impugned order and as to how the material on record satisfies those ingredients.

12. In view of the above, the impugned order dated 27.05.2015 is set aside and the case is remanded back to the learned Trial Court for fresh consideration on the point of charge. Learned Trial Court after hearing learned counsel for the petitioners as well as the learned APP for the State shall pass a fresh order on point of charge after examining the material placed on record along with the charge-sheet.

13. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the



purpose of the present petitions.

14. Learned Trial Court shall determine the order on charge independent of any observations made in the present order.

15. Pending applications, if any, also stand disposed of accordingly.

16. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

17. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

JULY 14, 2025/kr/ns