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

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Reserved on: 22.08.2023
Pronounced on: 04.09.2023

+ **CRL.REV.P. 267/2018 & CRL.M.A. 5655/2018**

THE STATE GOVT OF NCT OF DELHI Petitioner

Through: Mr. Manoj Pant, APP for the
State with SI Niraj Singh, PS
Nand Nagri

versus

BABITA & ORS Respondents

Through: Respondents-in-person

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J.

1. The present Criminal Revision Petition under Sections 397/401 of Criminal Procedure Code, 1973 (*Cr.P.C.*) has been filed on behalf of petitioner/State seeking setting aside of impugned order dated 06.09.2019 passed by learned Additional Sessions Judge-03, Shahdara, Karkardooma Courts, Delhi (*Trial Court*) arising out of FIR bearing no. 667/15 under Sections 147/148/149/323/341/307/365/114 of Indian Penal Code, 1860 (*IPC*) and Section 27 of Arms Act, 1959 filed at Police Station Nand Nagri, Delhi.

FACTUAL BACKGROUND

2. Briefly stated, the facts of the present case are that an FIR was registered on 30.06.2015, on the statement of complainant Akash, who had stated that one Satpal was murdered three months prior and thereafter, his paternal grandfather, and three uncles had been in judicial custody in that murder case. The complainant had alleged that his house, located near the deceased's residence had been vacated and he had relocated elsewhere. On 30.06.2015, as he had returned to check on his old house, he had been confronted by the accused namely Anil and Johnny, who happened to be the brothers of the deceased Satpal. It was alleged that the accused persons had forcefully apprehended the complainant while he was on his motorcycle, and had physically assaulted him, and thereafter, had forced him into a rickshaw and transported him to Nand Nagri, near



their residence, after which, three other persons namely Vikas, Ankush, and Sanjay, had joined them, and together, they had brought the complainant to a location i.e. Shukla Chakki in C-block, Nand Nagri. At this point, accused Anil had used an iron *rod*, accused Johnny had inflicted head injuries with a stone, and accused Vikas had stabbed the complainant with a knife. It was further stated that in the meanwhile, female relatives of the accused persons, including accused Anil's mother Bala, sister Babita and wife Rekha, accused Johnny's wife Kavita, and accused Sanjay's wife Maya had arrived at the spot and had started instigating the other accused persons to kill the complainant, seeking revenge for Satpal's murder. They had also physically assaulted the complainant, and during the course of altercation, accused Ankush had thrown household utensils and had fired a pistol into the air, after which, someone had contacted the police and the complainant had been taken to the hospital. The police officials had found bloodstains, drag marks, an empty cartridge, and a bullet at the spot of incident.

3. After completion of investigation, the chargesheet was filed against all the accused persons under Sections 147/148/149/323/341/307/365/114 of IPC. Thereafter, the learned Trial Court *vide* impugned order dated 06.09.2019 had framed charges under Sections 307/34 of IPC against accused persons namely Anil, Jony, Sanjay, Vikas, and Ankush, under Section 365/34 of IPC against accused Anil and Jony, and under Section 27 of Arms Act against accused Ankush. However, the accused persons namely Babita, Bala, Rekha and Kavita were discharged on the ground that there is no evidence



for the female accused persons instigating the male accused persons as the male accused persons were already armed with different weapons.

ARGUMENTS ADDRESSED BEFORE THIS COURT

4. Learned APP for the State has argued that the learned Trial Court has failed to consider the contents of the FIR where the names of the accused persons discharged by the Court have been specifically mentioned and specific roles have been assigned in commission of offence to them. It is stated that the learned Trial Court has also failed to consider statement of the complainant recorded under Section 161 of Cr.P.C., contents of the chargesheet filed by the prosecution, statements of other witnesses recorded under Section 161 of Cr.P.C. who are independent witnesses and who have clearly stated that the accused persons who have been discharged were also a part of the incident and a specific role has been assigned to them. It is stated that there are specific allegations against the accused/respondents, and the learned Trial Court has recorded no valid reasons for discharging the accused persons. It is also argued that the statement of the public witnesses could not have been ignored and a mini trial could not have been conducted at the stage of framing of charge, and therefore the impugned order be set aside.

5. Respondents appear in person who state that there is no infirmity with the order of the learned Trial Court as it had assessed the role attributed to respondents and concluded that they were not



involved in the alleged incident.

6. This Court has heard arguments addressed by learned APP for the State, and Respondents who appear in person, and has perused material on record.

LAW ON FRAMING OF CHARGE

7. Before averting to the submissions made by both the parties, this Court deem it appropriate to discuss the law of charge and discharge. As far as statutory law on framing of charge and discharge is concerned, the same is governed by Section 228 and 227 of Cr.P.C. respectively. These provisions read as under:

“227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of Sub-Section (1), the charge shall be read and explained to the



accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8. The Apex Court, in the case of *Sajjan Kumar v. C.B.I. (2010) 9 SCC 368*, held that at the time of framing of charge, the Court has to look at all the material placed before it and determine whether a *prima facie* case is made out or not, and the Court is not required to consider the evidentiary value of the evidence as any question of admissibility or reliability of evidence is a matter of trial. The relevant portion of the judgment is reproduced below:

“21. On consideration of the authorities about 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 of the Cr.P.C. 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 discloses 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.”

9. It was observed by the Hon’ble Supreme Court in *Asim Shariff v. National Investigation Agency (2019) 7 SCC 148*, that at the stage of framing of charge, the Trial Court is not expected to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations are as under:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him.



It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

(Emphasis Supplied)

10. The Hon'ble Supreme Court in *Bhawna Bai v. Ghanshyam (2020) 2 SCC 217*, has observed as under:

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

11. In a recent decision in *Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. 2022 SCC OnLine SC 1057*, the Hon'ble Apex Court has explained the well settled law on charge as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him,



the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

12. Thus, in view of the aforementioned judicial precedents on the law of charge and discharge, this Court notes that at the stage of framing charges, the Court's primary concern lies in determining a *prima facie* case against the accused. It is essential to emphasise that at the time of framing of charge, the Court need not delve into the



realm of whether the case is proven beyond reasonable doubt. That determination comes at a later stage, i.e. after the conclusion of trial. The pivotal criterion for the Court, while framing charges, is to assess if there exist sufficient grounds to proceed against accused further by framing charges against them and began the trial. A strict standard of proof is not required while evaluating the material on record, simply a *prima facie* view of the matter is to be considered to reach a conclusion as to whether strong suspicion exists on the basis of material on record for the purpose of framing of charge against them.

ANALYSIS AND FINDINGS

13. This Court notes that the relevant portion of the impugned order dated 06.09.2019 passed by the learned Trial Court reads as under:

“7. Now coming to the allegations against the females. It is mentioned that while other male accused persons were armed with different weapons, women had instigated them and had also beaten victim with kicks and fists. It has been argued that accused Babita, sister of deceased Satpal @ Kaley was not even present there as she is married for last about 25 years and she does not stay at Nand Nagri and live at Shalimar Park along with her husband and children.

8. Ld. counsel for accused has argued that all the women members have been falsely implicated as well as other male accused persons and the false FIR was lodged with a view to create pressure upon them so that they would not depose against chachas and grandfather of the victim in the murder case of deceased Satpal @ Kaley.

9. I find myself in part agreement with this contention. I do not have any grave suspicion that all the women had instigated the other accused persons to beat and kill the victim and had beaten him with kicks and fists as it does not appear likely. There was no requirement on their part to do so, when the other male



members were already acting as per their wishes, and were armed with different weapons and were beating the victim mercilessly, who survive due to some reasons beyond their control.

10. Under these circumstances, I discharge accused Babita, Bala W/o Sunder Lal, Kavita W/o Jony and Rekha W/o Satpal are also discharged. All ladies accused persons shall furnish bail bonds under Section 437A Cr.P.C.”

i. Material Against The Respondents/Accused

14. In the present case, the complainant had specifically stated that on the day of incident, when the accused persons namely Anil, Johnny, Sanjay, Vikas, and Ankush were beating him, the co-accused persons/respondents namely, Babita, Bala, Rekha and Kavita had joined them and had instigated the other accused to kill him. It was further specifically stated that thereafter, the respondents had themselves given beatings to the complainant through kicks and fists.

ii. Role of Trial Court At The Stage of Framing of Charge

15. The learned Trial Court in the present case has given no reasons as to what led it to believe at this stage, to assume on its own, that the ‘female members’ could not have participated in the commission of offence despite there being specific allegations levelled and specific roles attributed to them by the victim himself as recorded in the FIR and statement of the independent witnesses recorded under Section 161 of Cr.P.C by the police and brought on record as a part of chargesheet.

16. The order of the learned Trial Court is completely silent about



the reasons for discharge of the accused persons/respondents except for the two lines mentioned in para 9 of the impugned order, that this Court has reproduced in the preceding discussion. The reasons recorded in the impugned order, whereby the learned Trial Court has held that the allegations of instigating the other accused persons and beating the victim “does not appear likely” and that “there was no requirement on their part to do so, when the other male members were already acting as per their wishes” are pure assumption without basis. A dividing line seems to have been drawn by the learned Trial Court only with one line where it holds that ‘males’ were beating others at their instigation therefore, ‘females’ could not have participated in assault though, there are specific allegations of beating against them in the complaint.

17. The Courts cannot rely on unsubstantiated assumptions or presumptions in the absence of legislated assumptions or presumptions applicable under any specific Section of law. The role of Trial Court at the stage of framing of charge is limited and has to be guided by Section 228 of Cr.P.C. and the judicial precedents including the ones which have been mentioned in the preceding paragraphs. At the stage of framing of charge, the Court’s primary task is to ascertain whether a *prima facie* case exists against the accused on the basis of material placed on record by the prosecution. It is not within the purview of the Courts at this stage to assess whether the case has been proven beyond a reasonable doubt or not. As held by Hon’ble Apex Court in catena of judgments, the truthfulness, sufficiency and acceptability of the material produced



by the prosecution at the stage of charge can be seen only at the stage of trial.

iii. Gender Based Presumptions Untenable If Not Provided By Law

18. In this Court's opinion, the learned Trial Court committed a grave error by discharging the accused persons on the basis of assumptions which were not permissible at the stage of framing of charge. It is crucial to note that the learned Trial Court has on its own presumed and assumed that when the 'male members' were already beating the complainant there was no occasion for the 'lady members' to instigate them and to join them in beating the victim.

19. This Court is constrained to note that such differentiation was created by the learned Trial Court between the 'male accused persons' and the 'female accused persons'. **Such an assumption in favour of a female accused, lacking any substantive basis or valid grounds, goes against the core principles of our justice system, which is predicated on the objective assessment of facts rather than preconceived notions. Our legal system is founded on the principle of gender neutrality, unless otherwise provided, where each individual, regardless of their gender, is held accountable for their actions in accordance with the law. Presumptions based on gender have no place within this framework, unless provided by law, as they undermine the pursuit of truth and justice.** Each person's involvement in a criminal act has to be assessed



independently, based on the statements recorded and evidence collected by the prosecution and placed on record before the Court for consideration.

20. In the absence of any specific reasons for discharging the accused persons at the stage of framing of charge itself, in face of specific allegations against them that they had beaten them with fists and kicks, any such presumption made by the learned Trial Court holds no ground. This presumption was made by the learned Trial Court at the stage of framing of charge, whereas the Court's primary duty at this stage was only to apply its judicial mind and see whether a *prima facie* case on the basis of material on record was made out against the accused persons or not.

CONCLUSION

21. The statements of the independent witnesses as well as the complainant/victim, as documented in the record, presented sufficient material before the learned Trial Court to raise grave suspicion regarding the involvement of respondents in the commission of alleged offence, and the specific roles and presence of these individuals were disregarded by the learned Trial Court, without providing any reasons for such an omission.

22. The order seems to have been passed also overlooking the fact that ten accused persons *vide* chargesheet and supplementary chargesheet namely Anil, Jony, Sanjay, Vikas@ Mogli, Ankush, Babita, Bala, Rekha, Kavita and Maya. At the time of passing order



on charge, the learned Trial Court passed the following order:

10. Under these circumstances, I discharge accused Babita, Bala W/o Sunder Lal, Kavita W/o Jony and Rekha W/o Satpal are also discharged. All ladies accused persons shall furnish bail bonds under Section 437A Cr.P.C.

23. As per this order, Babita, Bala, Kavita and Rekha have been discharged whereas in the next line it mentions that 'all lady accused persons' shall furnish bail bonds under Section 437A of Cr.P.C., instead of writing the names of all the accused persons discharged. This Court is again constrained to observe that writing so in a judicial order does not reflect well on the judicial philosophy of treating all genders equally. It was a judicial order and the names of the persons discharged who were directed to furnish bail bonds should have been mentioned instead of mentioning and pointing them by their gender. Moreover, the name of accused Maya does not find mention in the names of discharged persons who is also a female by gender and in case all females as referred to by the learned Trial Court were discharged, her name should have been mentioned in the judicial order. The confusion therefore, due to passing of such order by referring to gender and not names as an accused and calling them by gender has arisen, whereby though as reflected from the order accused Maya has been discharged and she has also tendered her bail bond under Section 437A of Cr.P.C., her name is not mentioned in the names of discharged accused persons. Therefore, it seems the accused Maya is also not a respondent before this Court.

24. In view thereof, the order dated 06.09.2017 is set aside to the



extent it relates to accused persons namely Babita, Bala, Rekha, Kavita and Maya and the matter is remanded back to the learned Trial Court for passing order on charge afresh qua the respondents after hearing both the parties, in accordance with law.

25. Accordingly, the present petition is disposed of in above terms along with pending applications.

26. This Court while exercising judicial constraint directs that a copy of this order be sent to the concerned Trial Court Judge for information by the learned Registrar General of this Court.

27. Learned Registrar General of this Court is also directed to forward a copy of this judgment to all the District and Sessions Judges of Delhi who shall ensure the circulation of this judgment among all the Judicial Officers in their Courts. A copy be also forwarded to Director (Academics), Delhi Judicial Academy for taking note of its contents.

28. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

29. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 4, 2023/dk