Reserved on 11.11.2021
Delivered on 15.02.2022

A.F.R.
Case :- CRIMINAL REVISION No. - 1116 of 2019
Revisionist :- Rakesh Kumar Pandey & Anr.
Opposite Party :- State Of U.P. & Anr.
Counsel for Revisionist :- Arun Sinha,Siddhartha Sinha
Counsel for Opposite Party :- Govt. Advocate,Anil Kumar Sharma,Purnedu Chakravarty

Hon'ble Mrs. Sangeeta Chandra,J.

1. Heard Sri Arun Sinha, learned counsel for the revisionist, Sri Purnedu Chakravarty, learned counsel for the Victim and Sri Anil Kumar Sharma, learned counsel for the opposite party No.2.

2. This Criminal Revision has been filed praying for quashing of the order dated 25.07.2019 passed by the Additional Sessions Judge, Court no. 11 Lucknow in Sessions Trial No.4 of 2018 arising out of Case Crime No. 430 of 2016 under Sections 147, 148, 332, 307, 427, 504, 506, 353 I.P.C. registered at P.S. Hazrat Ganj Lucknow. By the order impugned, the Additional Sessions Judge has rejected the discharge application moved by the Revisionists. It has been stated in the affidavit filed in support of the Criminal Revision that F.I.R. was lodged against the Revisionists on 13.07.2016 falsely implicating them. It was alleged in the F.I.R. that the revisionist no.1 who is a Consolidation Officer, came to the office of Dr. Hariom, the then Consolidation Commissioner on 13.07.2016 in the afternoon at around 3:15 P.M. The purpose of visit as disclosed by the Revisionist no. 1 was to get his transfer from District Amethi to District Ballia

cancelled. The slip was sent to the Consolidation Commissioner through a peon named Chandan Singh. When the Revisionists met the Commissioner, Revisionist no. 1 started putting pressure on him to get his transfer cancelled and on refusal of the Commissioner, he became very angry and suddenly started abusing the Consolidation Commissioner and his son called in four other persons inside the Commissioners' office and they all manhandled him and beat him up. The Revisionists also tried to strangulate the Commissioner. The Revisionist no.2 broke a glass kept on the table and attacked the Commissioner with it, with the intention to kill him but by that time, the office peons, Chandan Singh, Raj Kumar and Ram Kishun came in and saved the Commissioner from the next blow. Thereafter, both the Revisionists ran away.

3. An F.I.R. was lodged by the peon Raj Kumar Singh arrayed as respondent no.2. The police recorded the statement of the complainant and three other employees of the office of the Consolidation Commissioner under Section 161 Cr.P.C. They also recorded the statement of Dr Hari Om, the victim. A biased investigation was carried out by the Investigation Officer. Dr Hariom got his medical report fabricated. After registration of F.I.R. the revisionist no.1 filed a writ petition praying for quashing of the F.I.R. . This Court was pleased to stay the arrest of the revisionist no.1 till the filing of the charge sheet. During hearing of such petition for F.I.R. quashing, the Court asked the Circle Officer/Investigation Officer to indicate by his personal affidavit as to how offence under Section 307 was made out. Before filing such affidavit, chargesheet was

filed as a result the petition itself became infructuous and was dismissed as such on 30.08.2016.

4. It has been stated by the Revisionists that Dr Hariom is an I.A.S. officer and an influential person and under his influence the services of the petitioner were also terminated within one and a half months from the date of incident although such termination and suspension order has been set aside by this Court on 20.02.2019 as having been passed in violation of principles of natural justice. It is stated that Revisionists have been falsely implicated. The opposite party no.2 has filed an affidavit before the trial Court deposing there in that entire case set up by the victim as mentioned in his F.I.R. is false and as a result of pressure being put upon him by the then Consolidation Commissioner. It has further been stated that in fact it was the revisionist no.1 who had been assaulted by Dr. Hariom, Raj Kumar, Chandan Singh and Ramkishun the revisionist no.1 filed a complaint against them to the Police but no action has been taken thereon.

5. It has been further stated that revisionist no. 2 was not involved in the case as his name is 'Mohit Pandey' and not 'Dinesh Pandey'. Several instances of victimisation of the Revisionists at the behest of the victim Dr Hariom have been mentioned in the Revision. It has also been stated that unnamed accomplices of the Revisionists who had allegedly attacked Dr. Hariom in his office were never found out and a Final Report was submitted by the Investigating Officer to the Court concerned. The revisionist no. 1 is an extremely sick person and he could not have assaulted Dr Hariom in the manner stated in the

F.I.R.. Raj Kumar Singh the complainant who is arrayed as respondent no. 2 in the Revision has also filed an affidavit in Court that Dr Hariom forced him to lodge a false case under Section 195 A I.P.C. against the revisionist. Raj Kumar Singh has also filed another case against an alleged eye witness namely Ram Kishun under Section 195 A I.P.C.. It has also been stated that after Dr Hariom was no longer posted as Consolidation Commissioner, the Ministerial Employees Union had sent a letter to the Authorities saying that no such incident happened on 13.07.2016 as mentioned in the F.I.R.

6. Sri Arun Sinha, learned counsel for the revisionist opened his arguments from giving a background of the case saying that revisionist no. 1 is a Consolidation Officer who was posted at Amethi and revisionist no.2 his Son. Dr, Hari Om, the victim was the then Consolidation Commissioner and also belongs to Amethi. His elder brother practices as an Advocate in Amethi, his Bua's Son is a Lekhpal who was working under the revisionist no.1. There was some marriage in the house of the said Lekhpal where Dr. Hari Om had pressured the revisionist no.1 to spend several lakhs of rupees in making arrangements for dry fruits and cars and other amenities. He kept on arranging the same out of his own pocket out to fear and respect for the Consolidation Commissioner, however, the Consolidation Commissioner asked for Rs.1,00,000/- in cash which could not be arranged by the revisionist No.1 and therefore, the victim Dr. Hari Om (I.A.S.) who was the then Consolidation Commissioner transferred the revisionist no.1 to Balia. The Consolidation Lekhpal who is

the cousin of Dr. Hari Om is an extremely corrupt employee and the revisionist is an honest officer and did not permit corruption of the concerned Lekhpal and therefore, out of pique the revisionist was transferred to Balia by the then Consolidation Commissioner.

7. Learned counsel for the revisionist has read out paragraph no. 32 of his petition to say that the revisionist no. 1 is an extremely sick person who was diagnosed with cancer of the Kidney in 1995. One of his kidneys has been removed. He has been suffering from several ailments including heart disease. Pages 137 to 255 of the paper book are the medical reports of the revisionist no. 1.

It has been argued that the revisionist no. 1 went to meet the Consolidation Commissioner on 13.10.2016 for cancellation of his transfer to Balia because he was sick. Dr. Hari Om pushed and kicked him and had also beaten him up and then called his peons and other employees of the office and a concocted story was framed at the instance of the policemen asking the peon from the office of the Consolidation Officer, one Raj Kumar Singh to lodge FIR on the basis of such concocted story. Raj Kumar Singh, the Peon has filed an affidavit before the learned trial court and also before this Court saying that he was forced into writing whatever he did at the police station while lodging the FIR against the revisionist nos. 1 and 2.

8. Learned counsel for the revisionists has pointed out page no. 63 of the paper bookwhich is an order passed by the Division Bench while hearing the writ petition filed by the revisionist, bearing writ petition No. 17004 (MB) of 2016, *Rakesh Pandey vs. State of U.P. and Others*,

wherein the Division Bench while refusing to interfere in the FIR had directed the Circle Officer concerned to conduct investigation and file his affidavit as to under what circumstance it was being concluded that the offence under Section 307 IPC has been committed by the revisionist. The Court directed the matter to be listed on a particular date and also directed that the petitioner be not taken into custody till the next date of listing. The State respondents, thereafter, filed a short counter affidavit hurriedly bringing on record the fact that charge sheet had been readied on 12.08.2016 and had been approved by the Supervisory Authority indicating commission of offence under Section 147,148, 332, 307, 504, 506, 427, 353 IPC. The Court therefore observed that prima facie it could not be disputed that offence had been committed insomuch as a public servant had been attacked and manhandled while he was on duty in his office. The Court further stated that since charge sheet is not under challenge before it and incriminatory evidence has been collected against the petitioner in the course of investigation, the petitioner would be at liberty to avail the remedy provided in law at the appropriate stage of the proceedings to challenge the charge sheet regarding invoking of Section 307 I.P.C. After the petition under Article 226 of the Constitution of India for quashing of FIR was thus disposed of by this Court on 30.08.2016, the revisionist moved a discharge application before the learned trial court. The discharge application has been rejected on 25.07.2019 by the learned trial court and therefore this revision has been filed.

9. While arguing the matter, learned counsel for the revisionist has pointed out an interim order dated 27.08.2019 passed by this Court while entertained the revision. The Court had observed on the basis of observations made in the interim order passed by the Division Bench in the case relating to FIR quashing filed by the revisionist, that the trial court may continue with the proceedings but the charge under Section 307 IPC shall not be framed against the accused by the learned court below. It has been submitted by the learned counsel for the revisionist that for the past two years the order passed by the Court has not been complied with and the learned court below has not framed any charge at all and it is just fixing the matter on various dates without any effective hearing.

10. It has also been argued by the learned counsel for the revisionists that this Court in its interim order in this revision had directed the Investigating Officer to collect evidence from CCTV camera footage installed in the office of the Consolidation Commissioner but such observation of the Court has not been taken heed of by the Investigating Officer.

11. This Court has carefully perused the interim order granted in this Revision and finds from the same that the Court had only recorded the submissions made by the learned counsel for the revisionists that the office of the Consolidation Commissioner is well equipped with security camera but despite repeated requests CCTV footage was not collected by the Investigating Officer, and investigation was done under the command of Dr. Hari Om, the then

Consolidation Commissioner. The Court also recorded the submissions made by the learned counsel for the revisionists that Investigating Officer flouted the provisions of Regulation 107 of the U.P. Police Act, while submitting the charge sheet. Several other submissions made by the learned counsel for the revisionists relating to no offence being committed under Section 307 IPC was also recorded by this Court in its interim order dated 27.08.2019. But, there is no direction by this Court in its interim order either to the Investigating Officer or to the trial court to get collected evidence from CCTV footage in the office of the Consolidation Commissioner. The argument of the counsel for the revisionists is misleading to say the least.

12. Learned counsel for the revisionists argued that since the Division Bench had held that no offence under Section 307 was committed and this Court while entertaining the revision had also observed in its interim order that no charge can be framed under Section 307, it should be taken that the order on the discharge application by the learned trial court has ignored the observation of the High Court and rejected the discharge application arbitrarily.

13. Learned counsel for the revisionists has pointed out Section 227, 228 and 216 of the Cr.P.C. to say that the learned trial court ought to have considered evidence placed before it and could have framed charges only for offences that were likely to have been committed. Also, that the trial court could alter the charges or add any charge anytime before the judgement is pronounced. Also, that Section 307 was added in the charge sheet only to ensure that the trial is conducted by the Sessions Court,

thus depriving the accused of remedy of appeal. If the charge under Section 307 had not been mentioned in the the charge sheet by the Investigating Officer then the trial would have been conducted in the Court of Judicial Magistrate, and then the revisionists would have one opportunity of filing an appeal against any order passed by the Judicial Magistrate, if it went against the revisionists.

14. Learned counsel for the revisionists has also argued before this Court that, the statements of all the prosecution witnesses as also defence witnesses have been filed, from the perusal whereof this Court would find that no charge under Section 307 could have been added in the charge sheet.

15. Counsel for the opposite party no. 2, namely, Raj Kumar Singh, the Peon who was the informant in the FIR has pointed out from his counter affidavit and also from the affidavit filed before the learned trial court that Raj Kumar Singh, the informant has denied the incident as alleged in the FIR to have ever taken place.

16. Learned counsel appearing for the opposite party no. 2 has pointed out from his counter affidavit paragraphs 6, 7, 8 to say that it has been the case of the opposite party no. 2 all along that he was forced to give statement under Section 161 of the Cr.P.C. before the police because of the influence of the victim who was then Consolidation Commissioner.

17. Sri Purnedu Chakravarty, Advocate appears for the victim and says that he has not been made a party to this criminal revision although he is the one who should be heard because he was beaten up by the revisionists.

18. Sri Purnedu Chakravarty, Advocate has been given a right of hearing by this Court only because the counsel for the informant, the opposite party no. 2 has denied the incident altogether, and has said that the FIR was drafted by the somebody else under the dictates of the then Consolidation Commissioner and he was forced to sign the same and submit it in the police station concerned.

19. Sri Purnedu Chakravarty, learned counsel appearing for Dr. Hari Om, the victim has pointed out from the order impugned that the incident that took place in between 03:15 PM to 03:30 PM in the office of the Consolidation Commissioner has not been denied. It has also not been denied that revisionist no. 1 himself had gone alongwith his son to meet Dr. Hari Om and had sent his parchi/application on the basis of which he was called into the office of the Consolidation Commissioner. Learned counsel for the victim has pointed out page 257 of the paper book, which is an order passed by this Court on an application under Section 482 of the Cr. P.C. moved by Mohit Pandey S/o Rakesh Pandey saying that he has been wrongly referred to in the FIR as Dinesh Kumar Pandey, and therefore, the investigation and the charge sheet can be said to be without application of mind by the Investigating Officer and under the influence of the IAS officer concerned. The Court has refused to interfere in the charge sheet and had rejected his petition under Section 482 of the Cr.P.C. leaving it open for Mohit Pandey to submit before the learned trial court that he had wrongly been implicated on the basis of mistaken identity. It has been pointed out that the charge sheet was also

challenged by the son of the revisionist. The charge sheet has not been interfered with.

20. Learned counsel for the victim has read out the entire order from internal page 3 onwards regarding the findings recorded by the learned trial court for rejecting the discharge application. It has been pointed out that no foreign material can be considered at the stage of moving discharge application before framing the charge. Sections 193, 207, 209, 226, 227, 228 of the IPC have been pointed out and also Section 216 of the Cr.P.C. to say that Sessions trial is different from the trial held by the Magistrate. It has been pointed out that in the Sessions Trial, the charge sheet is filed before the Magistrate, the Magistrate after taking cognizance on the charge sheet issues summons to the accused on the basis of documentary evidence filed alongwith the charge sheet. Thereafter, he commits the case for trail before the Sessions Court. The revisionist has neither challenged the cognizance order, nor the order passed by the Magistrate committing the case for trial to the Sessions Court. The charge sheet had also not been challenged by the revisionist no. 01. The charge sheet was challenged by his son, the challenge was rejected by this Court.

21. It has been pointed out that the power under Section 228(1) (a) has not been exercised by the Sessions Court, only if an order passed under Section 228 (1) (a) is passed can the accused have any ground to come before this Court saying that his right to appeal has been taken away. The order that has been passed by the Sessions Court is with regard to the discharge application of the

revisionists and the jurisdiction of this Court is limited over such an order under Section 397/401 Cr.P.C.

22. Learned counsel for the victim has relied upon the judgement rendered by the Hon'ble Supreme Court in the case of ***Sanghi Brothers (Indore) Pvt. Ltd. vs. Sanjay Choudhary and Others,*** **AIR 2009 Supreme Court 9**, (paragraph 7 and 8) as also judgments that have been cited by the learned trial court in the order impugned.

23. Learned counsel for the victim has also pointed out the judgment rendered in the case of ***Sanjay Kumar Rai vs. State of Uttar Pradesh & Anr.*** In Criminal Appeal no. 472 of 2021 decided on 07.05.2021 and paragraph 11 onwards of the same.

24. Learned counsel for the victim has also pointed out the statement of Sri Raj Kumar Singh, at page no. 33 saying that he has not disputed the meeting of the revisionist and his son with the then Consolidation Commissioner in his office, and he has also not disputed the presence of other peons like Ram Kishun, Chandan Singh and others. There is no dispute regarding the medical conducted of the victim where injuries has been shown on the face, on the head and on the neck of the victim. It was only because the Peons working in the office of the Consolidation Commissioner who came rushing to his office that the attempt at strangulation of the victim was thwarted. He has pointed out from the statement of the opposite party no. 2 and his affidavit that Raj Kumar Singh has not said anywhere that he had not given any statement under Section 161 of the Cr. P.C. to the police. The incident took place on 13.07.2016, the counter

affidavit that was filed in this case as also the affidavit that was filed before the learned trial court by Raj Kumar Singh is dated August,2018 i.e. two years after the incident where Raj Kumar Singh has turned around and suddenly stated that he was forced into lodging the FIR because the influence of the then Consolidation Commissioner in whose office he was was working as a Peon.

25. This Court must first consider the scope of interference under Section 397/401 of the Criminal Procedure Code.

In ***Amit Kapoor versus Ramesh Chander and ors*** **2012 9 SCC 460**, the Supreme Court was considering the scope of powers granted under Section 397 and Section 482 Cr.P.C. to the High Court. In Paragraph 2 of its judgement the Supreme Court framed the question of law thus -*"..A question of law that arises more often than not in criminal cases is that of the extent and scope of the powers exerciseable by the High Court under Section 397 independently or read with Section 482 of the Code of criminal procedure..."*. After considering the facts of the case regarding F.I.R. being lodged against the respondents and charge sheet being filed in Court and charge being framed by the trial Court on commital to the Court of Sessions, and the filing of a Criminal Revision by the respondent challenging the order of the trial Court framing the charge; the Supreme Court observed that the appellant had approached it in Appeal against the order of the High Court quashing the charge framed under Section 306 I.P.C. while permitting the trial Court to continue the trial in relation to offence under Section 448 of the I.P.C.

26. In paragraph 8 & 9, the Supreme Court observed: –

"8. Before examining the merits of the present case we must advert to the discussion as to the ambit and scope of the power which the Courts including the High Court can exercise under Section 397 and Section 482 of the Code. Section 397 of the Code 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. There has to be a well founded error and it may not be appropriate for the Court to scrutinise the order, which upon the face of it is a token of careful consideration and appears to be in accordance with law. If one looks into various judgements of this Court, it emerges that revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, or the material evidence is ignored or Judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but merely indicative. Each case would have to be determined on its own merits.

9. Another well accepted norm is that the revisional jurisdiction of the High Court is very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice Ex Facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in the given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories as aforestated. Even framing of charge is a much

advanced stage in the proceedings under Code of criminal procedure procedure..”

(emphasis supplied)

The Supreme Court thereafter considered the observations made by it in *State of Haryana versus Bhajan Lal* 1992 supp 1 SCC 335 , with regard to exercise of power under Section 482 by the High Court. It observed that even while enumerating the grounds on which power can be exercised under Section 482 Cr.P.C., the Court had uttered a note of caution to the effect that power of quashing of criminal proceedings should be exercised very sparingly and with great circumspection and that too, in the rarest of rare cases. The Court had warned that it would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

27. In paragraph 10, the Supreme Court observed that if jurisdiction under Section 482 of the Court in relation to quashing of an F.I.R. is circumscribed by caution as mentioned in *State of Haryana versus Bhajan Lal*, the revisional jurisdiction, particularly while dealing with framing of charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions the Court is required to consider the ‘record of the case’ and documents submitted there with

and, after hearing the parties, either discharge the accused or where it appears to the Court and in its opinion, there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the Court in relation to the existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for the exercise of such jurisdiction. *"It may even be weaker than a prima facie case. There is a fine distinction between the language of Section 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgement of the Court whereas Section 228 is tentative. That is to say, that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code."*

> *"It may be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no intra-court remedy is available in such cases. Of course, it may be subject to the jurisdiction of this Court under Article 136 of the Constitution of India. Normally, revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find a place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power of the Court. Merely an apprehension or suspicion of the*

same would not be a sufficient ground for interference in such cases..”

(emphasis supplied)

28. The Supreme Court went on to observe in paragraph-11 thus:-

“11. At initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which if put to trial, could prove him guilty. All that the Court has to see is that the material on the record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of State of Bihar versus Ramesh Kr Singh 1977 (4) SCC 39:

> *“4..under Section 226 of the Code while opening the case for prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage, the duty of the Court to consider the record of the case and the documents submitted there with and to hear the submissions of the accused and the prosecution in that behalf. The judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If the judge considers That “there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing,” as enjoined by Section 227. If on the other hand the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which – – (b) is exclusively triable by*

the Court, he shall frame in writing a charge against the accused" as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved would be incompatible with the innocence of the accused or not. The standard of test and judgement which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie Whether the

Court should proceed with the trial or not: if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example, if the scales of the pan as to guilt or innocence of the accused are something like even, at the conclusion of the trial, then on the theory of benefit of doubt the cases to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 of Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

(emphasis supplied)

29. In paragraph 12 of judgement rendered in *Amit Kapoor* (supra), the Supreme Court observed further: –

"the jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial Court or the inferior Court, as the case maybe. Though the Section does not specifically use the expression "prevent abuse of process of any Court or otherwise to secure ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a Court is the very foundation of the exercise of jurisdiction under Section 397, but ultimately it also requires

justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily..."

(emphasis supplied)

The Supreme Court referred to the powers granted under Section 482 Cr.P.C. to the High Court which are inherent and very wide and are not as limited as given under Section 397 of the Code. It observed that Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. However, the power under Section 482 can be exercised even in such cases where a trial Court order can be challenged under Section 397 in Criminal Revision. The only limitation in so far as Section 482 is concerned is that of self restraint and nothing more. The High Court as the highest Court exercising criminal jurisdiction in the State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extraordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by subordinate Court of its powers.

30. The Supreme Court in paragraph 19 observed that having discussed the scope of jurisdiction under Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, *"it would be appropriate for it to list the principles with reference to which Courts should exercise such jurisdiction."* It referred to an objective analysis of various judgements of the Supreme Court and culled out some of the principles to be considered for proper exercise of jurisdiction particularly with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

"1)....even though there are no limits of the power of the Court under Section 482 of the Code but the more the power the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings particularly, the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether they are uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach a conclusion and the basic ingredients of a criminal offence or not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate Courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) the Court has a duty to balance the freedom of a person and the right of the complainant of prosecution to investigate and prosecute the offender.

7) The process of Court cannot be permitted to be used for an oblique or ultimate, ulterior purpose.

8) Where the allegations made and as they appear from the records and documents annexed therewith to predominantly give rise and constitute a civil wrong with no element of criminality and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon critical analysis of the evidence.

9) another very significant caution that the Courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of Court leading to injustice.

10) it is neither necessary nor is the Court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the Investigating Agencies to find out whether it is a case of acquittal or conviction.

11) where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) in exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with it by the prosecution.

13) quashing of charge is an exception to the rule of continuous prosecution. Where offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing it at that initial stage The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14) Where the chargesheet, report under Section 173 (2) of the Code, suffers from fundamental legal defects, the Court may well be within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to an abuse of the process of the Court or that interest of justice will suffer otherwise, it may quash the charges. The power is to be exercised Ex Debito Justitiae that is ,to do real and substantial justice for administration of which alone, the Courts exist.

(emphasis supplied)

31. The Court observed in paragraph 22 thereafter that the Legislature in its wisdom has used the expression "*there is ground for presuming that the accused has committed an offence*". There is an inbuilt element of presumption. It referred to the judgement rendered by the Supreme Court in the case of *State of Maharashtra versus*

Somnath Thapa and others 1996 (4) SCC 659 and to the meaning of the word "*presume*", placing reliance upon Blacks' Law Dictionary, where it was defined to mean "*to believe or accept upon probable evidence"; "to take as true until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, incriminating material and evidences put to the accused in terms of Section 313 of the Code, and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the Court forming its final opinion and delivering its judgement*....."

(emphasis supplied)

32. Having perused the pleadings on record carefully and having heard the argument of the learned counsel for the parties, this Court has also gone through the order impugned dated 25.07.2019. The Additional Sessions Judge has mentioned the facts regarding discharge application being filed by the Revisionists, that they were falsely implicated and therefore charges should not be framed against them as proposed in the chargesheet. The F.I.R. was lodged on the advice of police officials, the investigation was biased, all injuries suffered by Dr Hariom were simple in nature and the medicolegal report was fabricated to include injury to head and neck so that a charge under Section 307 IPC was also included in the chargesheet. It was also claimed that the Revisionist no.2 had nothing at all to do with the matter except that he had

accompanied his father to the office of Dr. Hariom. Even his name was wrongly mentioned in the F.I.R. as Dinesh Pandey although he was Mohit Pandey.

33. The Additional Sessions Judge thereafter recorded the arguments made orally by the prosecution with regard to investigation being carried out fairly and *prima facie* charges under Sections 147, 148, 149, 332, 307, 504, 506, 427 and 353 I.P.C. being made out and that the discharge application should not be entertained by the trial Court.

34. After recording the submissions made by the learned counsel for the parties, Additional Sessions Judge has recorded his findings on the basis of the paper book before him. He has noted the bare facts regarding Case Crime No. 430 of 2016 being registered at P.S. Hazrat Ganj Lucknow and charge sheet being filed after due investigation. He has noted the contents of the F.I.R. and the statements made by the victim Dr Hariom and other witnesses to the Investigating Officer. He also noted the arguments of the Prosecution that the accused had approached the office of Dr Hariom with a common intention and had attacked him physically after abusing him verbally. Revisionists had tried to strangulate Dr Hariom and one of the accused had also attacked him with a broken piece of glass. Had he not been saved in the nick of time by his office peons who came in on hearing the commotion, Dr Hariom would have suffered mortally.

35. The learned trial Court has referred in great detail to the statements made under Section 161 of the Cr.P.C. by the victim and other witnesses. Learned trial court has

recorded that on the basis of evidence collected by the Investigating Officer prima facie charges as had been proposed by the prosecution were made out. The learned trial Court from paragraph 10 onwards of the impugned order has referred to several judgements of the Supreme Court with regard to the scope of interference in a discharge Application. The trial Court has referred to ***Palvinder Singh versus Balwinder Singh*** AIR 2009 Supreme Court 887; and ***Sanghi Brothers, Indore versus Sanjay Chaudhary*** AIR 2009 Supreme Court 9; as also ***State of Orissa versus Devendranath Padhi*** AIR 2005 Supreme Court 359, and ***State of Bihar versus Ramesh*** 1977 SCC Criminal 533; where the Supreme Court had observed about the duty of the trial Court at the time of framing of charge. It had been observed that the trial Court shall consider documents and evidence produced by the prosecution in support of the chargesheet. A detailed examination of such evidence and documents was not necessary as it would amount to consideration of evidence. At the stage of framing of charges the trial court should not conduct a mini trial. Only when the trial court finds from an examination of the Case Diary and other evidence collected by the Investigating Officer that there was no material at all to proceed against the accused, can discharge application be allowed.

36. The learned trial court has referred to the observations made by the Supreme Court that at the time of framing of charge *"the Court Has only to see whether there is sufficient material for the accused to be tried and*

not to evaluate and weigh the evidence in such a manner as to come to a conclusion that the accused can most certainly be convicted on the charges so proposed in the chargesheet....".

37. The learned trial Court has referred to Supreme Court's observations in ***Helios and Matheson Information Technology Ltd versus Rajiv Sawhney*** 2012 (76) ACC 341 (Supreme Court); thus:-

> *"...the law is that at the time of framing of charge or taking cognizance, the accused has no right to produce any material. No provision in the Cr.P.C. 1973 grants to the accused any right to file any material document at the stage of framing of charge. That right is granted only at the stage of trial. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the accused would mean permitting the accused to adduce his evidence at the stage of framing of charge and for the examination there of at that stage which is against the criminal jurisprudence."*
>
> *(emphasis supplied)*

38. Learned trial court thereafter observed that in view of the law settled by the Supreme Court in several judgements regarding the duty of the trial Court while considering a discharge application at the time of framing of charge, there was sufficient material in the paperbook for the accused to be tried and that no evidence was produced by the accused in the discharge application for him to come to a conclusion otherwise and therefore rejected the application for discharge moved by the accused.

39. In ***Sanjay Kumar Rai*** (supra), the Supreme Court was considering the Appellant's challenge to the High Court's judgement rejecting his Criminal Revision against the order passed by the Chief Judicial Magistrate refusing to discharge the appellant. The counsel for the appellants' argument was that *prima facie* the story of the complainant seemed to dubious and improbable. It observed on the basis of judgement rendered by the Supreme Court in ***State of Karnataka versus M.R. Hiremath,*** 2019 (7) SCC 515; and ***Sreelekha Senthil Kumar versus C.B.I.*** 2019 (7) SCC 82; that the Court should not enter into questions of evidentiary value of the material adduced at the stage of considering discharge and that it was impermissible to look into the merits of the case while exercising power under Section 239 Cr.P.C. Regarding the facts of the case where the High Court had dismissed the Criminal Revision only on the ground of lack of jurisdiction, it observed on the basis of judgment in *Madhu Limaye vs State of Maharashtra 1977 (4) SCC 551,* that although the High Court can exercise its jurisdiction in reviewing orders framing charges or refusing to discharge the accused, as it is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice, the discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. The Supreme Court observed that there should be interference in exceptional cases where failure to do so would likely result in serious prejudice to the rights of a citizen for example, when the contents of a complaint or the other purported

material on record is a brazen attempt to persecute an innocent person. It observed in paragraph 16 thus :-

> "*Further, it is well settled that the trial court while considering the discharge application is not to act as a mere Post Office. The Court has to sift through evidence in order to find out whether there is sufficient grounds to try the suspect. The Court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on (Union of India versus Prafull Kumar Samal 1979(3) SCC 4); Likewise, the Court has sufficient discretion to order further investigation in appropriate cases, if need be."*

40. In ***Sanghi Brothers*** (supra), the Supreme Court considered judgements rendered by it in S*tate of Maharashtra and others versus Somnath Thapa and others* 1996 (4) SCC 659; *Stree Attyachaar Virodhi Parishad versus Dilip Nathumal Chordia* 1989 (1) SCC 715, and *State of West Bengal versus Mohammad Khalid* 1995 (1) SCC 684; that if there is a presumption on the basis of evidence collected of culpability of the accused in the offence committed, then the Court should not interfere at the stage of framing of charge and discharge the accused.

It observed in paragraph 32:- *"the aforesaid shows that if on the basis of materials on record, the Court could come to the conclusion that commission of the offence is a probable consequence; a case for framing of charge exists. To put it differently, <u>if the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the</u>*

offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage".

(emphasis supplied)

"At the stage of framing of charge the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. The Court has to see while considering the question of framing the charge as to whether material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. The test of a prima facie case has to be applied. Even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the Court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction."

(emphasis supplied)

41. In ***Dilawar Balu Kurane versus State of Maharashtra*** 2002 (2) SCC 135, the Supreme Court had observed that while exercising power under Section 227 of the Code of Criminal Procedure, and considering the question of framing of charge, the trial Court 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 is made out and 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 of the charge and proceeding with the trial, however, by and large if two views are equally possible and the judge is satisfied that the evidence produced before him will give rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused.

42. However, such view although has been considered by the Supreme Court in its judgement rendered in ***State of Rajasthan versus Ashok Kumar Kashyap*** 2021 SCC Online SC 314; has not been relied upon it has instead placed reliance upon its own decision in ***State of Karnataka versus MR Hiremath*** (supra) and paragraph 25 thereof which is quoted as under :-

> *"25... The High Court ought to have been cognisant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 of the Code of Criminal Procedure. The parametres which govern the exercise of the jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge, the Court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of Tamil Nadu versus and Suresh Rajan 2014 (11) SCC 709, adverting to the earlier decisions on the subject, this Court held:*
>
> *29 – – 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 material on the 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."

(emphasis supplied)

As regards the arguments made by the counsel appearing on behalf of the opposite party no.2 Sri Anil Kumar Sharma that Raj Kumar Singh the complainant in the F.I.R. had later resiled from his complaint and had filed an affidavit before the trial court denying any incident having occurred on 13.07.2016 in the office of the Consolidation Commissioner, the Supreme Court has observed repeatedly, and most recently in a judgment rendered in S.L.P. (Crl.) No.9552 of 2021: *Hazrat Deen Vs. State of U.P.*; decided on 06.01.2022 "*that discrepancies cannot be a ground for discharge without initiation of trial"*. Hence the argument raised by learned counsel for the revisionist that the complainant himself had later on given a statement that no incident had actually occurred, needs to be looked into only at the time of trial and should not be seen at the time of consideration of discharge application.

43. Having considered the law on the subject and the order impugned, this Court finds that the trial court has considered in detail each and every aspect of the matter at

length and then passed an appropriate order. The scope under Criminal Revision being restricted to correct an apparent error in law or a perversity in fact, this Court finds no good ground to interfere in this Criminal Revision.

44. This Criminal Revision is accordingly ***dismissed.***

Order Date: 15/02/2022
Rahul

[Justice Sangeeta Chandra]