

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on : 24th March, 2022**
Pronounced on: 13th June, 2022

+ CRL.REV.P. 197/2018 & CRL.M.(BAIL) 339/2018

SURENDER @ TANNU @ TANVA Petitioner

Through: Mr. Anushree Kapadia and Ms.
Priyanka Rathi, Advocates

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Panna Lal Sharma, APP with
SI Brham Prakash, P.S. Sarita
Vihar

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition had been converted from a Criminal Writ Petition to a Criminal Revision Petition vide order of a coordinate bench of this Court dated 26th February, 2018, and had been filed on behalf of the petitioner seeking setting aside of Supplementary Chargesheet dated 8th August, 2016 filed in FIR No. 635/2014 registered at Police Station Sarita Vihar and of charges framed against the petitioner vide order dated 5th September, 2017 under Section 302/34 of the Indian Penal Code, 1860 (hereinafter "IPC") in Sessions Case No. 2712/2016 pending before

learned Additional Sessions Judge-03, South-East, Saket Courts, New Delhi.

BACKGROUND

2. A brief background of the case reveals that an FIR was lodged by the complainant, Ram Babu, wherein he stated that his brother, Raja Babu, now deceased, got into a fight with some boys from their locality and from Ali Vihar a few days before the incident. It is stated that on 23rd September, 2014, at around 10 pm, the deceased was returning to his house and he went to a cemented water tank near his jhuggi. The complainant, alongwith his neighbour, had gone to a temple at Ali Village where accused Vijay @ Mandi was present, who told the complainant that he was going towards his home and if anyone from the complainant's jhuggi tried to stop him, he would not leave them. When accused Vijay @ Mandi went towards the jhuggi he started abusing the deceased whereupon the complainant, his mother, father and sister came out of their house. They found that accused Vijay @ Mandi was hitting the deceased and when the complainant tried to stop the accused from hitting the deceased, the accused Vijay @ Mandi pushed him.

3. It is stated in the FIR that accused Vijay @ Mandi, with an intention to kill, stabbed the deceased, Raja Babu, in the chest and neck and ran away from the spot. Consequently, DD No. 82B was recorded in Sarita Vihar Police Station, with regard to the injury to the deceased caused due to a knife stabbing at Jhuggi No.472, New Priyanka Camp, Madanpur, Khadar, Sarita Vihar and the FIR No. 635/2014 was lodged under Section 302 of the IPC against the accused.

4. The accused Vijay @ Mandi was arrested and presented before the Juvenile Justice Board, since, he was under the age of 18 years, and he confessed to the concerned Inspector that he stabbed the deceased. Statements of the family members of the deceased as well as other witnesses were recorded. As per the statement of the mother and the sister of the deceased, the petitioner herein was involved in the commission and murder of the deceased. It was stated by mother of the deceased that the petitioner and accused Aamin were holding the deceased when accused Vijay @ Mandi stabbed him in the chest. A Chargesheet dated 6th December, 2014 was filed before the Juvenile Justice Board and the main accused Vijay @ Mandi was released on bail by the Juvenile Justice Board.

5. Thereafter, an application for further investigation was moved by the complainant before the learned Metropolitan Magistrate for monitoring of investigation and the same was allowed with the directions to the Investigating Officer to submit a Status Report. The Investigating Officer, vide order dated 27th April, 2016, was directed to file a further report and on 31st August, 2015, the Investigating Officer filed a Supplementary Chargesheet dated 8th August, 2016, under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C").

6. Vide order dated 31st August, 2016, the learned Metropolitan Magistrate issued summons to the petitioner before the Court on 8th September, 2016 and on the said date the petitioner was taken into judicial custody. Subsequently, charges were framed by the learned Additional Sessions Judge on 5th September, 2017 against the petitioner under Section 302/34 of the IPC.

7. The petitioner is before this Court assailing the order dated 5th September, 2017 as well as the Supplementary Chargesheet dated 8th August, 2016 filed by the Investigating Officer.

SUBMISSIONS

8. Ms. Anushree Kapadia, learned counsel appearing on behalf of the petitioner submitted that the instant petitioner has been falsely implicated in the matter and he has not played any role in commission of offence under Section 302/34 of the IPC, since, there was no motive or pre-meditated objective which could have been attributed to the petitioner. Neither in the FIR the petitioner was named nor did the chargesheet name the petitioner as an accused. It is submitted that only in the statement of the mother of the deceased, the petitioner was named as an accused, wherein she stated that the petitioner and accused Aamin were holding the deceased when the accused Vijay @ Mandi stabbed him, however, the said statement was also vague and did not constitute any offence against the petitioner.

9. It is vehemently submitted that the statement of the mother of the deceased is to be read with the evidence of bystanders, who had witnessed the entire incident and had revealed that the fight was in fact between the deceased and the main accused Vijay @ Mandi and the petitioner was only trying to separate the two of them from fighting. The learned counsel for the petitioner relied upon the statements of the eye witnesses, namely, Suraj Kumar, Rajesh Kumar Vishvakarma and Amit Kumar, who all have stated that the petitioner was only trying to stop the fight on the night of the incident.

10. It is submitted that in the first Chargesheet dated 6th December, 2014, the petitioner was put into Column 12 since nothing incriminating was found against him. Moreover, in the Status Report dated 25th April, 2016, filed by the Investigating Officer, in pursuance of order passed by the learned Metropolitan Magistrate, the fact was noted by the Investigating Officer that no incriminating evidence came on record against the petitioner.

11. It has been strongly urged by the learned counsel for the petitioner that the Supplementary Chargesheet dated 8th August, 2018, which has been filed after 2 years from the date of the incidence, does not refer to any fresh material or evidence found in the course of investigation. There was no need for the learned Metropolitan Magistrate to direct the Investigating Officer to file a Supplementary Chargesheet, since, no new material was found. The statements of all witnesses were recorded in 2014, whereupon the first Chargesheet was filed, after consideration of all the evidence and statements recorded under Section 161 of the Cr.P.C., and in that Chargesheet, no incriminating material was found against the petitioner and hence, he was put in Column 12 and not named as an accused. It is submitted that the statement of the mother of the deceased, naming the petitioner, was recorded prior to the filing of the first Chargesheet and hence, was available as evidence before the Chargesheet was filed and despite that the petitioner was not chargesheeted. It is submitted that even in the Supplementary Chargesheet, it is stated that as per the statements of the eye witnesses, the petitioner was trying to stop the fight between the main accused Vijay and the deceased.

12. It is submitted that the Supplementary Chargesheet has been filed in contravention to the provision under Section 173 (8) of the Cr.P.C. which permits further investigation and filing of a report based on the material found in such further investigation. No new facts were brought to the notice of the Investigating Officer by any of the witnesses which led him to file the Supplementary Chargesheet. Reliance has been placed upon ***Manilal Keshri vs. State of Bihar, 2006 SCC OnLine Pat 635***, wherein it was held that a second chargesheet filed without any new material coming on record and only upon reconsideration of material already available on record cannot be said to be in consonance of Section 173(8) of the Cr.P.C.

13. Learned counsel for the petitioner also relied upon ***Rajinder Prasad vs. State, 1995 SCC OnLine Del 136***, wherein it was observed by a coordinate bench of this Court as under:

“5. After hearing learned counsel for the parties at length, I am of the considered opinion and this what follows from the observations of the Supreme Court in Ram Lal Narang's case (supra) that in the event of any fresh material or evidence coming in the possession or knowledge of the investigating officer, the investigating officer or the Police is not without power to investigate further in view of the new evidence or new material which has come to its notice. It is for the benefit of the prosecution as well as for the accused. The sub-section 8 of Section 173 of the Code on the basis of this new material or evidence which has come to the light has given power to the Police to further investigate in the matter to find the truth. However, can this power be exercised in relation to a case property which was before the prosecution on the basis of which charge-sheet has been filed and after two years

prosecution comes before the Court seeks permission that they may be allowed to draw a second sample for further test, the answer is in negative. This would amount to a roving and fishing enquiry or to fish out evidence against the accused after the charge-sheet has been filed against the accused, which is certainly not the intention of sub-section 8 of Section 173 of the Cr.P.C. I am also supported in my view by Shyama Charan Dubey's case (supra) I –

“Reverting back to the said sub-section as enacted by the legislature, it has to be noted that it is only permissive in character. The Investigating Officer (or Officer-in-charge of Police Station) may undertake a further investigation even after filing of a charge-sheet. If he does so, the further evidence collected by him shall be forwarded to the Magistrate along with a further report. Therefore, I am clearly of the view that neither the prosecution, i.e the informant nor the accused can claim as a matter of right a direction from a Court commanding further investigation by the Investigating Officer under sub-section(8) of Section 173 after a charge-sheet was filed after investigation.

6. An additional reason for coming to the aforesaid conclusion is that even for investigation there must be a point of finality. The law expects the discharge of duties by the Investigating Officer properly resulting in a report under Section 173(2). It may only be in some exceptional case where the Investigating Officer may have to collect some further evidence/materials and submit ti to the Magistrate along with his further report. Such an exceptional case will only prove the general rule that normally investigation terminate with filing of the charge-sheet in Court. In other words, the

Investigating Officer believes and places reliance on the evidence and material collected by him by then.

7. In my considered opinion, after the challan has been filed, the C.F.S.L. report dated 24.8.1990 was also filed along with the challan, on the basis of that report, the prosecution has to sustain its case, the prosecution cannot be allowed to improve upon its case in the absence of any new material or evidence as envisaged by sub-section 8 of Section 173 of the Cr.P.C....”

14. Learned counsel for the petitioner submitted that the complainant had filed Protest Petition seeking monitoring of the investigation before the concerned Magistrate. The said Protest Petition was filed by the complainant after the declaration of the main accused as a juvenile. It is submitted that the protest petition of the complainant is belated and is made falsely, in a misconceived manner and is an afterthought to falsely implicate the petitioner. The Complainant and the family of the deceased are taking out their frustration on the petitioner herein, who is innocent and was in fact trying to help the deceased.

15. It is submitted that it is well settled law that where the allegations made in the FIR or the complaint even if taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the FIR or complaint may be quashed in exercise of powers under Article 226 and 227 of the Constitution of India or inherent powers under Section 482 of the Cr.P.C. In absence of any fresh material on evidence discovered by the Investigating Officer, no Supplementary Chargesheet could have been

prepared that too only on insistence of the complainant. Such procedure is alien to settled principles of law.

16. Learned counsel for the petitioner relied upon the judgements of *State of Haryana vs. Bhajan Lal & Ors.*, 1992 Supp. (1) SCC 335, *Satish Mehra vs. Delhi Administration & Ors.*, (1996) 9 SCC 766 and *Avinash J. Mahale vs. State of Maharashtra*, 2006 SCC OnLine Bom 1370 to support her case.

17. It is further submitted that the charges have been framed against the petitioner without appreciating the provisions of the law under Section 173(8) of the Cr.P.C., since, no new material has been found for the filing of the Supplementary Chargesheet, and therefore, the order framing charges is liable to be set aside and the Supplementary Chargesheet is liable to be quashed.

18. *Per Contra*, Mr. Panna Lal Sharma, learned APP appearing on behalf of the State vehemently opposed the instant petition and submitted that the impugned order as well as the Supplementary Chargesheet need not be set aside or quashed as the same have been passed and filed in accordance with law and after proper appreciation of facts and circumstances.

19. It is submitted on behalf of the State that a specific role has been assigned to the petitioner herein for catching hold of the deceased while the main accused stabbed him. There is a serious allegation against the petitioner in the statement made by the mother and sister of the deceased. It is submitted that without the help of the petitioner and the accused Aamin, accused Vijay @ Mandi could not have succeeded in stabbing and killing the deceased.

20. In the statement of the family members recorded on 27th September, 2014, the statement of the sister revealed that the petitioner was present at the spot of the incident and the mother of the deceased stated that when she reached the spot of the incident she saw the petitioner and accused Aamin had caught hold of her son from the back and the accused Vijay @ Mandi was stabbing him. It is submitted that after investigation, the Supplementary Chargesheet was filed against the petitioner and accused Aamin under Section 302/34 of the IPC and 25/54/59 of the Arms Act,1959 and both were put in column 11, without arrest, since the family members had named them and specified their role of catching hold whereas the other eye witnesses did not attribute any role to the petitioner.

21. It is submitted that at the stage of framing of charge, the learned Additional Sessions Judge had to only see whether *prima facie* a case was made out against the petitioner or not, and even on the basis of suspicion the charges may be framed. It is submitted that veracity of the witnesses can be tested during trial only and not at the stage of framing of charge. Therefore, it is submitted that the trial should take its own course and the case of the petitioner be decided on merits before the learned Trial Court. It is submitted that in light of the contentions raised, the instant petition is liable to be dismissed since there is no merit in the same.

22. Heard learned counsel for the parties and perused the record. This Court has perused the contents of the Supplementary Chargesheet as well as the impugned order.

FINDINGS AND ANALYSIS

23. The principal issue before this Court is whether the Supplementary Chargesheet dated 8th August, 2016, filed by the Investigating Officer was in accordance with the provisions of the Cr.P.C., as laid down under Section 173(8). The answer to the same would help to identify the legality and validity of the impugned order whereby charges were framed against the petitioner.

24. A reading of Section 173(8) of the Cr.P.C. is deemed necessary at this stage, hence, it is reproduced hereunder:-

“173 (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

25. The Section lays down the provision for enabling further investigation in a criminal case after a final report, in terms of Section 173, has been made to the Magistrate. The provision distinctively uses the words *“where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary”*, which signifies that the investigation has to be furthered for there being a reason to believe that there exists certain material that would help establish the case of either of the parties. Therefore, for conducting a further investigation there needs to be a reason or scope for furtherance of investigation and

finding of material which was otherwise not found, or if found not properly considered or investigated into. If upon such investigation fresh material is actually found and certain aspects of elements collected earlier were not investigated into, the concerned Police Officer/Investigating Officer may make a report to the Magistrate and bring on the record the facts newly discovered.

26. The Hon'ble Supreme Court in ***Kishan Lal vs. Dharmendra Bafna, (2009) 7 SCC 685***, has made an observations as to what may be the considerations before the concerned authority/Investigating Officer conducts a further investigation into a case, which are reproduced as under:-

“16. The investigating officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to his notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to his notice. Apart from the aforementioned grounds, the learned Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. The question, however, is as to whether in a case of this nature a direction for further investigation would be necessary.”
(emphasis supplied)

27. The scope of further investigation and its subsequent process has also been discussed by the Hon'ble Supreme Court in ***Vinay Tyagi vs. Irshad Ali, (2013) 5 SCC 762***, wherein the following was laid out:-

“15. A very wide power is vested in the investigating agency to conduct further investigation after it has filed the report in terms of Section 173(2). The legislature has specifically used the expression “nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Section 173(2) has been forwarded to the Magistrate”, which unambiguously indicates the legislative intent that even after filing of a report before the court of competent jurisdiction, the investigating officer can still conduct further investigation and where, upon such investigation, the officer in charge of a police station gets further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the prescribed form. In other words, the investigating agency is competent to file a supplementary report to its primary report in terms of Section 173(8). The supplementary report has to be treated by the court in continuation of the primary report and the same provisions of law i.e. sub-section (2) to sub-section (6) of Section 173 shall apply when the court deals with such report.

16. Once the court examines the records, applies its mind, duly complies with the requisite formalities of summoning the accused and, if present in court, upon ensuring that the copies of the requisite documents, as contemplated under Section 173(7), have been furnished to the accused, it would proceed to hear the case.

17. After taking cognizance, the next step of definite significance is the duty of the court to frame charge in terms of Section 228 of the Code unless the court finds, upon consideration of the record of the case and the documents submitted therewith, that there exists no sufficient ground to proceed against the accused, in

which case it shall discharge him for reasons to be recorded in terms of Section 227 of the Code...

17.1. It may be noticed that the language of Section 228 opens with the words,

“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”,

he may frame a charge and try him in terms of Section 228(1)(a) and if exclusively triable by the Court of Session, commit the same to the Court of Session in terms of Section 228(1)(b). Why the legislature has used the word “presuming” is a matter which requires serious deliberation. It is a settled rule of interpretation that the legislature does not use any expression purposelessly and without any object. Furthermore, in terms of doctrine of plain interpretation, every word should be given its ordinary meaning unless context to the contrary is specifically stipulated in the relevant provision.

17.2. Framing of charge is certainly a matter of earnestness. It is not merely a formal step in the process of criminal inquiry and trial. On the contrary, it is a serious step as it is determinative to some extent, in the sense that either the accused is acquitted giving right to challenge to the complainant party, or the State itself, and if the charge is framed, the accused is called upon to face the complete trial which may prove prejudicial to him, if finally acquitted. These are the courses open to the court at that stage.

17.3. Thus, the word “presuming” must be read ejusdem generis to the opinion that there is a ground. The ground must exist for forming the opinion that the accused has committed an offence. Such opinion has to

be formed on the basis of the record of the case and the documents submitted therewith. To a limited extent, the plea of defence also has to be considered by the court at this stage. For instance, if a plea of proceedings being barred under any other law is raised, upon such consideration, the court has to form its opinion which in a way is tentative. The expression “presuming” cannot be said to be superfluous in the language and ambit of Section 228 of the Code. This is to emphasise that the court may believe that the accused has committed an offence, if its ingredients are satisfied with reference to the record before the court.

21. The “initial investigation” is the one which the empowered police officer shall conduct in furtherance of registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.

22. “Further investigation” is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as “further investigation”. The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as “supplementary report”. “Supplementary report” would be the correct expression as the subsequent

investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a “reinvestigation”, “fresh” or “de novo” investigation.

41. Having discussed the scope of power of the Magistrate under Section 173 of the Code, now we have to examine the kinds of reports that are contemplated under the provisions of the Code and/or as per the judgments of this Court. The first and the foremost document that reaches the jurisdiction of the Magistrate is the first information report. Then, upon completion of the investigation, the police is required to file a report in terms of Section 173(2) of the Code. It will be appropriate to term this report as a primary report, as it is the very foundation of the case of the prosecution before the court. It is the record of the case and the documents annexed thereto, which are considered by the court and then the court of the Magistrate is expected to exercise any of the three options aforesaid. Out of the stated options with the court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. The power of the Magistrate to direct “further investigation” is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory

capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.”

28. The interpretation by the Hon'ble Supreme Court suggests that there needs to be some form of development or scope of development in a case which gives way for the Investigating Agency to look further into the matter. Although further investigation has been distinguished from fresh investigation and reinvestigation, however, the provision for further investigation could not have been introduced solely to provide for reappraisal or reconsideration of the old or primary evidence and other material which was already on record before the Magistrate. There has to be an extent of novelty in the report or Supplementary Chargesheet filed by the Investigating Agency, which leads to discovery of material or evidence in a manner which was not before the Court in the primary report or Chargesheet.

29. An observation in this regard has been made by a coordinate bench of this Court, in **Rajinder Prasad vs. State, 1995 SCC OnLine Del 136**, as under:-

“5. After hearing learned counsel for the parties at length, I am of the considered opinion and this what follows from the observations of the Supreme Court in Ram Lal Narang's case (supra) that in the event of any fresh material or evidence coming in the possession or knowledge of the investigating officer, the

investigating officer or the Police is not without power to investigate further in view of the new evidence or new material which has come to its notice. It is for the benefit of the prosecution as well as for the accused. The sub-section 8 of Section 173 of the Code on the basis of this new material or evidence which has come to the light has given power to the Police to further investigate in the matter to find the truth. However, can this power be exercised in relation to a case property which was before the prosecution on the basis of which charge-sheet has been filed and after two years prosecution comes before the Court seeks permission that they may be allowed to draw a second sample for further test, the answer is in negative. This would amount to a roving and fishing enquiry or to fish out evidence against the accused after the charge-sheet has been filed against the accused, which is certainly not the intention of sub-section 8 of Section 173 of the Cr.P.C. I am also supported in my view by Shyama Charan Dubey's case (supra) I –

“Reverting back to the said sub-section as enacted by the legislature, it has to be noted that it is only permissive in character. The Investigating Officer (or Officer-in-charge of Police Station) may undertake a further investigation even after filing of a charge-sheet. If he does so, the further evidence collected by him shall be forwarded to the Magistrate along with a further report. Therefore, I am clearly of the view that neither the prosecution, i.e the informant nor the accused can claim as a matter of right a direction from a Court commanding further investigation by the Investigating Officer under sub-section(8) of Section 173 after a charge-sheet was filed after investigation.”

6. *An additional reason for coming to the aforesaid*

conclusion is that even for investigation there must be a point of finality. The law expects the discharge of duties by the Investigating Officer properly resulting in a report under Section 173(2). It may only be in some exceptional case where the Investigating Officer may have to collect some further evidence/materials and submit it to the Magistrate along with his further report. Such an exceptional case will only prove the general rule that normally investigation terminate with filing of the charge-sheet in Court. In other words, the Investigating Officer believes and places reliance on the evidence and material collected by him by then.

7. In my considered opinion, after the challan has been filed, the C.F.S.L. report dated 24.8.1990 was also filed along with the challan, on the basis of that report, the prosecution has to sustain its case, the prosecution cannot be allowed to improve upon its case in the absence of any new material or evidence as envisaged by sub-section 8 of Section 173 of the Cr.P.C.....”

30. On the question at hand, the Patna High Court in ***Manilal Keshri v. State of Bihar, 2006 SCC OnLine Pat 635***, has made the following observations:

“10. Admittedly, there is no legal bar against further investigation. Section 173(8) of the Criminal Procedure Code does not restrict reopening of the case in which charge-sheet has already been submitted and cognizance has been taken. Only precondition is that the reopening must be on the basis of fresh material, which were not available earlier and also that permission should be taken from Court. In (1979) 2 SCC 322 : AIR 1979 SC 1791 : (1979 Cri LJ 1346) (Ram Lal Narang v. The State of Bihar), 1976 (2) PLJR 158 (S.N. Singh v. The State of Bihar) 1994 (2) PLJR 96 : (1994 Cri LJ NOC 112) (Yamuna Pathak v. The

State of Bihar). In (1979) 2 SCC 322 : AIR 1979 SC 1791 : (1979 Cri LJ 1346), it has been held “neither Section 173 nor Section 190 lead us to say that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance by the authority, permits repeated investigations on discovery of fresh facts. Police can exercise such right as often as necessary when fresh information comes to the light.” In 1994 (2) PLJR 96 : (1994 Cri LJ NOC 112) also it has been held “supplementary charge-sheet submitted by police on basis of material already collected, submission of supplementary charge-sheet not on the basis of fresh evidence but only on reconsideration of evidence already collected at time of earlier submission of charge-sheet is not contemplated under Section 173(8) of the Criminal Procedure Code.

11. *In the present case, admittedly, there was rid fresh material for submission of the second charge-sheet. The second charge-sheet was submitted only on reconsideration of evidence already collected at the time of earlier submission of the charge-sheet. In this view the second charge-sheet as well as order taking cognizance cannot be considered in consonance with the provision of Section 173(8) of the Criminal Procedure Code.*

12. *In the written argument, opposite party No. 2 has tried to make out a case that the proceedings of Complaint Case No. 335(C) of 2001 filed by opposite party No. 2 was stayed under Section 210 of the Criminal Procedure Code. Now when the police has submitted the supplementary charge-sheet in Barh P.S. Case No. 186 of 2001 under Section 173(8) of the Criminal Procedure Code, Complainant Case No. 335(C) of 2001 will be deemed to be merged/amalgamated with the police case. The trial of*

accused, Mahesh Kumar alias Lallu, Mani Lal Keshri, Rajesh Kumar, Ganesh Kumar, who are accused in complaint case as also in the supplementary charge-sheet would proceed separately and parallel to the trial of Barh P.S. Case No. 186 of 2001. This submission cannot be accepted considering the fact that the complaint case has got an independent status. The second charge-sheet submitted under Section 173(8) of the Criminal Procedure Code cannot be deemed to have been amalgamated with the complaint case. The submission of the second charge-sheet on the basis of stale material cannot be justified on the basis of such argument for which there is no provision under Criminal Procedure Code.

13. Considering all this, I am of the view that two separate trials in some police case on the basis of two charge-sheets cannot proceed specially when the second charge-sheet is completely illegal and without jurisdiction. Accordingly, the order taking cognizance, dated 7-4-2004, second charge-sheet No. 184 of 2003 as well as the order of commitment passed in the case committing the case to the Court of Sessions is quashed. Sessions Trial which is being conducted on the basis of first charge-sheet will proceed. So far the complaint case is concerned, it will proceed on its own merit in accordance with law.”

31. The abovementioned precedents certainly establish the principle that where further investigation has been ordered and a report has been submitted, there has to be certain fresh material, or appreciation of old material from a different perspective, that brings on record facts and evidence which was not available to the prosecution or the Court earlier. Where no such new material or evidence, whatsoever, has been discovered by the further investigation, any cognizance taken by the

Magistrate may be said to be in contravention to the provision under Section 173 of the Cr.P.C.

32. In the instant matter, the statements of the family members under Section 161 of the Cr.P.C. were recorded four days after the incident. The mother of the deceased, Pushpa, and the sister of the deceased, Aarti, named the present petitioner and his involvement in the commission of the offence. The relevant and true translated part of the statement of the mother of the deceased is reproduced herein:-

“Stated that I am residing at the aforementioned address along with my family. I am a housewife. I have two sons and three daughters. On 23/24-09-2014 around 10-10:30 pm, I was sitting outside my house talking to my neighbor Kalpana. My elder son Raja had come from attending a Birthday Party in Colony and asked me to sleep to which I replied yes in a while. Raja was sitting in front of me. Somebody called Raja and he went towards the water tank. After a while my daughter Aarti came running and informed me that there was a fight. I ran and reached to the place of incident where I saw that resident of ali vihar Vijay aka Mandi was stabbing with knife in the chest of my son and Tannu son of Mahavir Singh resident of Priyanka Camp and Aamin resident of Ali vihar were holding my son from the back. One Suraj from colony son of Kali Charan was saving my son and Rakesh was sitting there. I was shouting that my son has been stabbed. Raja ran towards the house and fell at the gate. My younger son Ram also came . we were taking raja to hospital In auto till then Police van came, and then we took raja to Appollo hospital in the car, where doctor declared him as dead, I was unable to give my statement earlier. Now you came to my home and you had written my statement and read out to me, it is correct.”

The true translated statement of the sister, Aarti, recorded under Section 161 of the Cr.P.C., is also reproduced hereunder:-

“Stated that I live on the address above with my family and I study in Sarvodaya Kanya Vidyalaya Madanpur Khadar in class 11th. On date 23/24/2014 in the evening time I and my brother Raja had gone in the colony in birthday. I had came home alone, after coming I had changed my clothes and after coming out asked my mother that Raja had not came then mummy said that he had came and gone towards water tank then I had gone towards water tank then I had seen the fighting was going on and some boys were beating my brother. I came back running to my home and said to mummy that some boys are beating my brother Raja. My mother had gone there running. I came back then my brother was not seen to me but near water tank a boy named Vijay @ Mandi was standing there taking knife in his hand and along with him Tannu was standing and some more boys were standing there then my brother had ran towards my home then Vijay also with a knife in his hand ran behind him but my brother fell down on the door of the house and Vijay had ran back. Vijay and his companions had fought with my brother earlier also on Sunday. I was unable to give my statement earlier. Now you came to my home and you had written my statement and read out to me, it is correct.”

33. For proper adjudication of the matter, the true translated statements of the eye witnesses to the incident are also reproduced hereunder:-

A. Statement of Suraj Kumar

“Stated that I live on the aforesaid address along with my mother and father and I do farming work. On date 23-09-2014 at time about 10:30 hrs in night I went to the water tank from my house where Surendra @Tannu who lives in slums whom I knew very well and Rakesh who is my neighbour were sitting on the water tank, after some time I

came back to my home, after sometime I had gone back to the road when I saw that Raja Babu's mother Pushpa and his sister and my mother were running towards the water tank then I also ran towards that side then I saw that Raja Babu and Vijay@Mandi were fighting together and Surendra @Tanwa was trying to separate the two and Surendra @Tanwa was stopping Mandi from fighting. And all the persons present there were stopping both from fighting then at that time Raja Babu had ran away towards his home and Vijay @Mandi ran away from there towards Ali Vihar, When i went to see Raja Babu at his house I saw that Raja Babu fell down in front of his home and he was bleeding, his family members took Raja to the Hospital. I have no knowledge as to when was Raja Babu stabbed with the knife. Later on came to know that Raja Babu has passed away. You have recorded my statement. I have heard and it is correct.”

B. Statement of Rakesh Kumar Vishwakarma

“Stated that I live at aforesaid address with my family and do the work of repairing of vehicles in Khan Market. On Date 23-09- 2014 I came from my duty and sat on the water tank made on the Pushta, during that period Suraj who also lives in slums whom I knew from before also came there and Tannu alias Tanwa who lives in my jhuggies was sitting also on the tank. At about 10:30 hrs in night Vijay alias Mandi came from side of Ali Vihar. Tannu asked Rs.20/- from Mandi. Mandi had given Rs.100 to Tannu. Tannu had said that I don't have change money then Mandi had said that pay the rest of money tomorrow. And Mandi had said to Tannu that I am going to my home and Mandi had gone from there. At that time Raja Babu came there suddenly, and spoke to Tannu that I have to talk something with Mandi. Call him back. Tannu had told to Raja Babu that you tell me what you have to talk. Then Raja Babu had said that I will not tell you I will

tell to Mandi only. Then Tannu called Mandi, at that time Mandi had reached in front of the slum of Munni. Mandi came back to water tank. Tannu told Mandi that Raja Babu wants to talk something with you. Raja asked Mandi as to what did you tell Ameen about me, to which Mandi replied that he did not tell anything to Ameen you can call him and talk over the phone. Raja had said that I don't have to talk anything on phone, you don't know where you are standing. That on this matter Mandi had slapped Raja Babu. On this matter Raja and Mandi started fighting among themselves. At that time the mother and sister of Raja Babu and brother came there. The family members of Tannu and Raja Babu started, intervening between the both and were trying to separate the two from the fight, Suddenly Raja Babu lifted the ladder which was kept on the roof of the slum and hit Mandi with the ladder and both started beating one another. Then Raja went towards his home and Mandi towards All Vihar, I don't have knowledge of this matter as to when and how the knife was stabbed to Raja Babu. That later on I came to know that Mandi had stabbed knife to Raja Babu. Due to which death of Raja was caused. You had written my statement heard it is correct.”

C. Statement of Amit Kumar

“Stated that I live on the aforesaid address on rent along with my family. On date 23.09.2014 in night I had gone to the house of Ram Babu from my home. Then Ram Babu was sitting outside of his house on the cot. I had said to him that let us go for toilet. First we had gone towards Shiv Temple there Raja Babu met I had asked him that where you are going then he said that I am going to a Birthday Party. Thereafter I and Ram Babu came back and went towards the temple of Ali Vihar. There we went to urinate. Then at that time Vijay @Mandi came out from near the temple and told Ram

Babu to make understand his brother who is threatening to beat me, Ram Babu had told that go and speak to my brother why you are speaking to me. Mandi told okay then at that time Ameen and two boys came there. All the three were on a motorcycle, then Ameen told Mandi let's go I will drop you home. Mandi told that I will go myself. Ameen and the boys sat on the motorcycle and went away towards Ali Vihar and Mandi went towards our slums. Ram Babu and I were smoking bidi. At that time we heard some voice of quarrelling coming from the side of slum then Ram Babu and I went towards the slums. We saw that it was crowded. I said Ram Babu that there must be fight between the family members of one Pochu. However Ram Babu went running at the place where the fight was taking place. When I reached there then I saw that Ram Babu had caught Mandi and Raja Babu hit Mandi with the ladder. Mandi pushed Ram Babu, and started beating Raja Babu in anger. Raja Babu in his defence ran towards his home for his safety and fell right in front of his home. I saw Raja Babu's sister screaming that Raja Babu is bleeding. When Raja ran away towards his house then at that time Mandi also ran back towards Ali Vihar, with a knife in his hand. Tanwa was also standing there who said that I am also injured because of the fight that took place between Raja Babu and Mandi. Tanwa also went away. The Fight was between Vijay @Mandi and Raja Babu. Thereafter I left for my home.

I had read my statement, it is correct.”

34. There is no dispute to the fact that the first Chargesheet was filed after the statements of the family members was recorded and also after the statements of the witnesses were recorded. Both the sides of the story were available with the Investigating Officer when the first Chargesheet was filed. After appreciating all the material before it, the concerned

Investigating Officer put the petitioner in Column 12 of the first Chargesheet. It is a testament to the fact that the Investigating Officer did not find any such material to accuse the petitioner herein of commission of offences under Section 302/34 of the IPC at the time of filing of the first Chargesheet. Thereafter, on an application filed by the complainant, the concerned Magistrate directed the Investigating Officer to file a further report.

35. It is an extremely relevant fact to be noted that the Investigating Officer, upon being directed to further investigate the matter, and after having conducted a further investigation in pursuance of the directions, submitted a Status Report, wherein it was reiterated that no incriminating evidence was found against the petitioner. Despite making the said observations in its Status Report dated 25th April, 2016, in the Supplementary Chargesheet, the Investigating Officer put the name of the petitioner under Column 11 as an accused. The only change by the time of filing of this Supplementary Chargesheet was that the complainant had filed a Protest Petition and had approached the Magistrate for monitoring the investigation. There was no new material, fresh evidence or any other primary evidence appreciated from a different angle before filing of the Supplementary Chargesheet, which was not in existence or not in the knowledge of the Investigating Officer at the time of filing of the first Chargesheet and therefore, it was not only in contravention to the provision under Section 173(8) of the Cr.P.C. but also against the principles of 'further investigation' as has been reiterated by the Court of the Country.

36. Furthermore, it is relevant to see that the Magistrate after appreciating the contents of the Supplementary Chargesheet framed charges against the petitioner and passed the following order:-

“That on 23.09.2014 at about 10:30 PM at New Prinyanka Camp near water tank Pusta Road, New Delhi, within the jurisdiction of PS Sarita Vihar, you in furtherance of common intention along with juvenile Vijay @ Mandeep committed murder of deceased Raja Babu by stabbing him with a knife and thereby you both committed an offence punishable under section 302/34 IPC and within my cognizance.

I do hereby direct that you both be tried by this Court for the above said charges.”

37. The aforesaid impugned order may also be tested on the basis of law laid down by the Hon’ble Supreme Court as well as this Court. The law laid down establishes that while framing the charges the concerned Court needs to appreciate the material on record for its *prima facie* satisfaction as to whether such charges can be framed against the accused before it.

38. The Hon’ble Supreme Court as well as various High Courts have interpreted the provisions in the understated judgements, that have effectuated the principles to be considered while a Judge is framing charge or discharging an accused: -

In *Union of India vs Prafulla Kumar Samal, (1979) 3 SCC 4*, the Hon’ble Supreme Court laid down the principles regarding the considerations before the concerned Court while framing of charges and discharging an accused: -

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

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

Hon'ble Supreme Court in ***Bhawna Bai v. Ghanshyam***, (2020) 2 SCC 217, has laid down 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.

“15. Considering the scope of Sections 227 and 228 CrPC, in Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , the Supreme Court held as under : (SCC pp. 477-79, paras 17 & 19)

“17. 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 therewith and, after hearing the parties, may 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 exercise of such jurisdiction.....

19. *At the 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 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.*”

16. *After referring to Amit Kapoor [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , in Dinesh Tiwari v. State of U.P. [Dinesh Tiwari v. State of U.P., (2014) 13 SCC 137 : (2014) 5 SCC (Cri) 614] , the Supreme Court held that for framing charge under Section 228 CrPC, the Judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the Judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.*”

Hon’ble Supreme Court in ***Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 12*** has observed as under:-

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]).

In *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989)

1 SCC 715, Hon'ble Supreme Court reiterated as hereinunder:-

“14. These two decisions do not lay down different principles. Prafulla Kumar case [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] has only reiterated what has been stated in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257] . In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that “the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused”. The “ground” in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally

accepted, would reasonably connect the accused with the crime. No more need be enquired into.”

A coordinate bench of this High Court has also expressed its observations in the issue at hand in ***B.N. Rao v. State (CBI), 1997 SCC OnLine Del 308*** as stated as under:-

“7. After the charge sheet is filed in Court, the prosecutor has to inform the Court as to what is the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. It is at that stage that the Court is to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has thereafter to pass an order either under Section 227 or 228 of the Code of Criminal Procedure (in short referred to as “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 doing so as enjoined by Section 227 of the Code. If on the other hand, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, he shall frame in writing the charge against the accused as provided in Section 228 of the Code. Therefore, at the time of framing of charge, the Court is not required to meticulously judge the truth, veracity and effect of the evidence which the prosecutor proposes to adduce at the trial. It is not obligatory for the Judge at that stage 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 if and judgment 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 of the matter under Section 227 or Section 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. If there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then it will not be open for the Court to say that there were no sufficient grounds for proceeding against the accused. It was, therefore, held by the Supreme Court in State of Bihar v. Ramesh Singh, 1977 (4) SCC 39, that if the scales as to the guilt or innocence of the accused are even at the conclusion of the trial, then on the theory of benefit of doubt the case must end in the acquittal of the accused; but if on the other hand, the scales are even at the initial stage of making an order under Section 227 or Section 228 of the Code, then in such a situation, ordinarily and generally, the order will have to be made under Section 228 and not under Section 227 of the Code. The test is whether there is sufficient ground for proceeding and not whether there are sufficient grounds for conviction.”

39. The above laid principles suggest that the learned Judge framing charges shall limit itself to the *prima facie* consideration of material and evidence on record. The Judge need not be satisfied on the question of whether the trial, when conducted, will lead to the conviction or acquittal of the accused, but the consideration needs to be whether the accused is to be sent for trial at the first instance or not, based on the material on record. An investigation into the offence and elaborate appreciation of evidence is not required, and is rather discouraged, at the stage of framing of charges and only the material *prima facie* establishing a case against or in favour of the accused is what is significant. Moreover, as per the requirement of Section 227 and 228, the learned Judge shall consider whether “sufficient grounds” exist or not and such consideration shall be supported by material on record.

40. The learned Additional Sessions Judge, at the stage of framing of charges, was to only *prima facie* appreciate the evidence and other material on record. However, apart from the statements made by the mother and the sister of the deceased, there was admittedly no other incriminating evidence found against the petitioner. Such limited material was not sufficient to even *prima facie* make out a case against the petitioner, also in light of the fact that the same material was available at the time of filing the first Chargesheet, whereas, the charges were framed after 2 years of the incident and the statements of the family members of the deceased.

CONCLUSION

41. Keeping in view the abovementioned principles and the law under the Cr.P.C., this Court finds that the Supplementary Chargesheet filed at a subsequent stage after the alleged further investigation, was not filed after having been found any fresh material or evidence, and therefore, neither was the further investigation proper and in accordance with the law nor the Supplementary Chargesheet is sustainable in the eyes of law. The material relied upon by the Investigating Officer at the time of filing of the subsequent and Supplementary Chargesheet was present at the time of filing the first Chargesheet as well and in the first Chargesheet the petitioner was put in Column 12.

42. Moreover, the impugned order framing charges against the petitioner was passed after the filing of Supplementary Chargesheet and taking into account the fact that the petitioner was named as an accused in the said Supplementary Chargesheet.

43. In light of the above made observations, this Court is inclined to quash the Supplementary Chargesheet and set aside the order on charge passed by the learned Additional Sessions Judge-03, South-East, Saket Courts, New Delhi for being filed and ordered in contravention to the law laid down under the Cr.P.C. as well as by the High Court and the Hon'ble Supreme Court.

44. Accordingly, the instant petition is allowed and the Supplementary Chargesheet dated 8th August, 2016 filed in FIR No. 635/2014 registered at Police Station Sarita Vihar is quashed qua the petitioner, as well as the order on charge against the petitioner dated 5th September, 2017 under Section 302/34 of the IPC passed in Sessions Case No. 2712/2016 by learned Additional Sessions Judge-03, South-East, Saket Courts, New Delhi is also set aside qua the petitioner.

45. Pending applications, if any, also stand disposed of.

46. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JUNE 13, 2022

Aj/MS