

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 25.10.2021
Pronounced on : 04.01.2022

+ CRL.REV.P. 150/2020

SHAKILUDDIN @ BABLOO

..... Petitioner

Through: None

versus

THE STATE

.... Respondent

Through: Dr. M.P. Singh, APP for the State
with Insp. Balmukund Rai, PS
Chandni Mahal.

**CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

ORDER

RAJNISH BHATNAGAR, J.

1. The present revision petition U/s 397/401 Cr.P.C. has been filed by the petitioner/revisionist with prayer to set aside the impugned order Dated 09.01.2020 passed by Ms. Neelofer Abida Perveen, Additional Sessions Judge, (Central), Tis Hazari Courts, Delhi vide which the Ld. Trial Court ordered to frame the charge U/s 302 IPC against the petitioner/revisionist.

2. In brief, the facts of the case are that on 29.12.2017, complainant alongwith his son went to house No. 808, Kamra Bangash to attend the marriage of son of one Shahid who was also residing at Kamra Bangash. During the barat procession, the complainant, his son and other persons were watching the barat from roof. The petitioner/revisionist was also present in the said barat and at about 11:00 p.m. petitioner/revisionist started firing from his pistol and fired one bullet towards the son of the complainant which hit him on the right side of his chest. The son of the petitioner fell down and thereafter he was removed to the hospital.

3. Initially, on the statement of the complainant and the MLC a case U/s 307/336 IPC & 27/54/59 Arms Act was registered. Thereafter injured Naeem died and section 302 IPC was substituted in place of section 307 IPC.

4. None has appeared for the petitioner/revisionist to make submissions in this case. However, the impugned order has been challenged by the petitioner/revisionist on the grounds that the statement given by a person after his arrest cannot be treated as a statement made U/s 10 of the Indian Evidence Act. It is also averred in the revision petition that nothing has been mentioned by the witnesses about the intention or motive of the petitioner/revisionist in the entire charge sheet. It is further averred that the Ld. ASJ has failed to

appreciate that there is no evidence to prove the charge of murder. The petitioner/revisionist has relied upon **Satish Mehra Vs. State of NCT of Delhi** 2013 CRL. Journal 411 in order to support his contention that there is no unimpeachable and acceptable evidence against the petitioner/revisionist in the present case. The petitioner/revisionist has also relied upon **Rukmini Narvekar Vs. Vijay Satardekar and Ors.** Crl. Appeal No. 1576-1577 of 2008 to contend that at the stage of framing of the charge the Court may look into the material produced by defence if such material establishes that the whole prosecution version is absurd.

5. The petitioner/revisionist has further relied upon **P. Vijayan Vs. State of Kerala** (2010) 2 SCC 398 and **Union of India Vs. Prafulla Kumar Samal** to contend that if two views are possible and one of them give rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empowered to discharge the accused.

6. On the other hand, it is submitted by the Ld APP for the State that at the stage of framing of charge, only prima facie view is to be taken. It is further submitted by the Ld. APP for the State that there is no infirmity in the impugned order dated 09.01.2020 and the Ld. Trial Court has rightly framed the charge against the petitioner/revisionist. It is further submitted by the Ld. APP that the father of the deceased who is the complainant has categorically stated in his statement that it

was the petitioner/revisionist who after wiping out his pistol started firing and fired one bullet towards his son which hit on his chest. It is further submitted by the Ld. APP that whatever the defence the petitioner/revisionist wants to take, the same can be taken by him during the course of the trial. It is further submitted by the Ld. APP that the petitioner/revisionist was having an un-licensed weapon.

7. It is well settled law that at the stage of framing of charge, the court has power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against accused has been made out. When the material placed before the court discloses great suspicion against the accused which has not been properly explained, the court will be justified in framing charge. No roving inquiry into the pros and cons of the matter and evidence is not to be weighed as if a trial was being conducted. If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case of framing of charge exists.

8. To put it differently, if the courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the stage of framing of a charge, probative value of the materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The

truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor any weight is 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.

9. The standard of test 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 this stage of deciding the matter under Section 227 or under Section 228 of the Code. 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. While deciding the question of framing of charge in a criminal case, the court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise.

10. What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence. The above proposition is supported with law laid down by the Hon'ble Apex Court and Hon'ble High Court reported as "*Union of India vs Prafulla Kumar*", AIR 1979 Supreme Court 366, "*State of Maharashtra and others vs Som Nath* CRL. REV.P. 150/2020

Thapa and other” JT 1996 (4) SC 615, “*State of Bihar vs Ramesh Singh*”, AIR 1997 SC 2018: (1997 CRI LJ 1606), “*Umar Amdula Sakoor Sorathia vs. Intelligence Officer Narcotic Control Bureau*” JT 1999 (5) SC 394, “*Kalu Mal Gupta vs. State*” 2000 I AD Delhi 107.

11. In the present case, the perusal of the impugned order dated 09.01.2020 showed that the Ld. ASJ has framed the charge on the basis of the material as placed on record by the prosecution and the statement of the eye witness who is the father of the deceased who has stated in his statement that it was the petitioner/revisionist who after wiping out his pistol started firing and fired one gunshot towards his son. At the stage of framing of charge, only prima facie view is to be taken and if on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case of framing of charge exists.

12. As far as the judgments relied upon by the petitioner/revisionist are concerned, there is no dispute with regard to the propositions of law laid down in the said judgments, however, no one has appeared from the side of the petitioner/revisionist to argue this revision petition and nothing has been placed on record to show as to what material the petitioner/revisionist wanted to place at the time of argument on charge. As far as the question of motive and intention is concerned, the same would be seen during the course of the trial.

13. Therefore, in view of the discussions mentioned hereinabove, I find no infirmity in the impugned order dated 09.01.2020 passed by the Ld. Trial Court, the same is, therefore, upheld. Consequently, the revision petition is dismissed.

14. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

JANUARY 04, 2022

Sumant

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