

State Vs. Gayasuddin @ Gayas & Ors.

CNR No.: DLCT01-002278-2024

SC No.: 109/2024

FIR No.: 429/2023

Under Sections: 307/385/506/120B/34 IPC

P.S.: Chandni Mahal

26.04.2024

Present: Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Ayub Ahmed Qureshi, Ld. Counsel for the accused persons, namely, Gayasuddin @ Gayas, Shahzada Irfan @ Lala and Nafees @ Haddi.
Mr. Rakesh Bhugra, Ld. Counsel for the accused, namely, Mohd. Rehan @ Gaonwala. (*through video conferencing*)
Mr. Virender Singh, Ld. Counsel for the complainant.
All the accused persons, namely, Gayasuddin @ Gayas, Shahzada Irfan @ Lala, Nafees @ Haddi and Mohd. Rehan @ Gaonwala have been produced from judicial custody.

ORDER ON CHARGE

1. By means of the present order, this Court would decide whether the accused persons, namely, Gayasuddin @ Gayas, Shahzada Irfan @ Lala, Nafees @ Haddi and Mohd. Rehan @ Gaonwala (hereinafter referred to as the '***accused persons***') are to be charged for the offence(s) alleged against them in the chargesheet or for any other offence or the accused persons are to be discharged. Apposite to outrightly note that the co-accused, namely, Mohd. Nouman, charge-sheeted along with the accused persons has since left for heavenly abode on 14.02.2024 and pursuant to a verification report in this regard, having been filed by the concerned IO, proceedings *qua* the said accused were abated on 04.03.2024, pursuant to a separate order passed by this Court.

2. Succinctly, the case of the prosecution is that on 05.11.2023, on receipt of PCR Call *vide* DD Nos. 47A/48A/49A/50A/51A/52/A, the concerned police official reached at H.No. 1196, Near Asaf Ali Road, Delite Cinema, Chandni Mahal, where they were informed about the victims, Mohd. Tahir and Anas having been injured by Mohd. Rehan, Mohd. Irfan, Gayasuddin and their other companions and the said victims been taken to LNJP Hospital, consequent thereto. Subsequently, the victim/complainant, Mohd. Tahir, informed the police official in his statement that accused, Mohd. Rehan, Mohd. Nouman (since deceased) and Mohd. Irfan, his neighbours, were the History sheeters and habitual offenders of PS. Chandni Mahal. As per the complainant, he had earlier got two FIRs bearing FIR No. 69/2012, u/S. 386/506/34 IPC & 25/27 Arms Act as well as FIR No. 79/2012, u/S. 457/380 IPC against the accused Mohd. Nouman and Mohd. Irfan, consequent thereto, the said accused used to persistently harass and threaten the complainant as well as his family members. Further, as per the complainant, at least a month prior to the incident in question, Mohd. Irfan had threatened to extort a sum of Rs. 5 lacs from the complainant and upon failure to give the said amount, put the complainant in fear of injury/serious repercussions. As per the complainant, the same was followed by another incident with his nephew, Shahwaiz, wherein the accused Irfan and his associates, robbed Shahwaiz of meat on 08.10.2023 and handed it over to one, Salman. The complainant further asserted that he had lodged a complaint regarding the aforesaid incident(s) and that on the date of incident, on 05.11.2023, had gone to PS. Chandni Mahal to give his statement and returned to his home thereafter. As per

the complainant, at around 08:45 p.m., on the said date, when the complainant was present below his home, accused Mohd. Rehan, Mohd. Irfan and Gayasuddin as well as their other associates reached there and exhorted that the complainant had already lodged two cases against them as well as refused to give the sum of Rs. 5 lacs towards extortion, instead, informed them that the complainant had registered a complaint. Consequently, the said persons, started inflicted kicks, blows and bat injuries on the complainant, with an intention to kill him. In the meanwhile, the complainant's nephew, Anas reached at the spot. However, the said accused persons inflicted several injuries, targeting Anas' head, with an intention to kill him. Subsequently, upon police reaching the spot, the said accused fled from the spot, however, not before Mohd. Rehan and Gayasuddin self-inflicted injuries to wrongfully implicate the complainant as well as his family members. Further, as per the complainant, it was subsequently brought to his attention that accused Mohd. Rehan, Nafees @ Haddi and Salman (since absconding) attacked Anas in Hospital with a surgical blade, in order to kill him. Notably, the said statements were also reiterated by Anas and Shahwaiz. Pertinently, on the basis of the said complaint, FIR was registered, and investigation ensued, in which process the accused persons were apprehended. Further, as per the MLC of the complainant as well as Anas, the nature of their injuries were opined as 'simple' and 'grievous', respectively.

3. Ld. Addl. PP for the State submitted that the facts and circumstances specified under the charge sheet, including the documents/material placed on record, demonstrate a *prima facie* case against the accused persons for the commission of offence

levelled against him and to consequently, proceed with the framing of charge(s) against the said accused persons.

4. *Per contra* Ld. Legal Aid Counsel for the accused persons submitted that no case/charge against the accused persons is even *prima facie* established and that the accused persons have been falsely implicated in the present case. As per the Ld. Counsel, neither have specific roles been attributed to the said accused, nor is there any evidence/material brought forth to establish even a *prima facie* case against them. In fact, as per the Ld. Counsel, a perusal of chargesheet would demonstrate that accused Mohd. Rehan and Gayasuddin are themselves victims of offence, in the hands of the complainant and his family members as well as the recovery attributed to the accused is planted by the concerned IO to falsely implicated the accused persons in the present case. Accordingly, Ld. Counsel submitted that no charge may be framed against the accused persons.

5. The arguments of Ld. Counsel for the accused and that of Ld. Addl. PP for the State have been heard as well as record(s)/material placed on record, thoroughly perused.

6. Before proceeding further, this Court deems it pertinent to observe the settled law¹ that at the stage of framing of charges, neither can the truth, veracity and effect of the prosecution case be meticulously² judged, nor can any weight to be attached to the probable defence of the accused. On the contrary, at such a stage, only the sufficiency of ground for proceeding against the accused, on a general consideration of materials placed before the Court by the investigating police

¹ *State of Bihar v. Ramesh Singh, AIR 1977 SC 2018*

² *Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460*

officer is relevant. In fact, the probative value³ of the material on record cannot be gone into, and the material placed on record by the prosecution has to be accepted as true at that stage. Needless to mention that the superior courts⁴ have persistently deprecated the practice of holding a mini trial at the time of framing of charge. Relevant to further note that it is trite law⁵, at the stage of framing of charge, only the police report is required to be considered and the defence of the accused⁶ cannot be looked into. Further, though, sifting of evidence is permissible⁷, however, scanning of evidence in detail is not, at the stage of framing of charge. Concomitantly, it is trite law⁸ that the inconsistency in the material produced by the prosecution⁹ or defect in investigation¹⁰, cannot be looked into for discharge of an accused, in the absence of full-fledged trial. Needless to further emphasize¹¹ at the stage of charge, court is not even required to record detailed reasons as to why charge is framed, rather¹², a very strong suspicion founded upon materials placed before the Court, which leads it to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged, may justify the framing of charges. In fact¹³, it is only when no case is made out even after presuming entire prosecution evidence, only then can

3 *Soma Chakravarty v. State*, (2007) 5 SCC 403

4 *Indu Jain v. State of M.P.*, (2008) 15 SCC 341

5 *State Anti-Corruption Bureau, Hyderabad & Anr. v. P. Suryaprakasam*, (1999) SCC (CrL) 373 and *State of Orissa v. Debendra Nath Padhi*, 2005 (1) SCC 568

6 *State of Gujarat v. Dilipsinh Kishorsinh Rao*, 2023 SCC OnLine SC 1294

7 *State of Maharashtra v. Priya Sharan Maharaj & Ors.*, (1997) 4 SCC 393

8 *Sheoraj Singh Ahlawat v. State of U.P.*, (2013) 11 SCC 476

9 *Sheoraj Singh Ahlawat v. State of U.P.*, (2013) 11 SCC 476

10 *State of Tamil Nadu by Inspector of Police v. N. Suresh Ranjan & Ors.*, (2014) 11 SCC 709

11 *Bhawna Bai v. Dhanshyam & Ors.*, (2020) 2 SCC 217

12 *Supdt. and Remembrance of Legal Affairs, West Bengal v. Anil Kumar Bhunja*, AIR 1980 SC 52 and *Sajjan Kumar v. CBI*, (2010) 9 SCC 368

13 *Manjit Singh Viridi v. Hussain Mohammed Shattaf*, (2023) 7 SCC 633

an accused be discharged. Needless to accentuate that it is a settled law¹⁴, “*at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial.*”

7. Therefore, wary of the aforesaid principles, in light of the arguments addressed by the Ld. Counsel for accused persons as well as the arguments addressed by Ld. Addl. PP for the State, this Court, outrightly observes that from the facts and circumstances of the case, material and the documents and material placed on record, including *inter alia* the contents of the chargesheet, statements of witnesses, and MLC of the victims, *prima facie* case under Section 387/506 (part II) IPC stands established against accused Shahzada Irfan @ Lala; *prima facie* case under Section 120B IPC¹⁵, Section 307 IPC read with Section 120B IPC stands established against the accused persons, namely, Mohd. Rehan @ Gaonwala, Shahzada Irfan @ Lala, Gayasuddin @ Gayas and Nafees @ Haddi; *prima facie* case under Section 307 read with Section 34 IPC stands established against accused, namely, Mohd. Rehan @ Gaonwala, Shahzada Irfan @ Lala and Gayasuddin @ Gayas; as well as *prima facie* case under Section 307 read with Section 34 IPC stands established against accused, Mohd. Rehan @ Gaonwala and Nafees @ Haddi. Further, from the perusal of case record, it is revealed that there is strong suspicion and sufficient material/ground(s) to proceed against the said accused persons.

¹⁴ *Sonu Gupta Vs. Deepak Gupta & Ors.*, (2015) 3 SCC 424

¹⁵ *Nadir v. State (NCT of Delhi)*, 2021 SCC OnLine Del 4123 and Section 10 of the Indian Evidence Act, 1872.

At the same time, there are witness(es) who can depose against them. In so far, as the contentions of the Ld. Counsel for the accused persons regarding the nature of injury on the body of the victims is concerned, the same does not find favour with this court in view of the settled judicial precedents¹⁶. Simultaneously, this Court unambiguously observes that it is a settled law¹⁷ that mere defect in investigation cannot be a ground for discharge. Further, the other arguments of Ld. Counsel for the accused pertaining to the accused being victim of offence are subject matter of trial, which cannot be considered in detail at this stage, as aforenoted.

8. Accordingly, in light of the foregoing discussion charge(s) under **Section 387/506 (part II) IPC** is/are framed against accused **Shahzada Irfan @ Lala**; charges under **Section 120B/302 IPC** and **Section 307 IPC** read with **Section 120B IPC** are framed against the accused persons, namely, **Mohd. Rehan @ Gaonwala, Shahzada Irfan @ Lala, Gayasuddin @ Gayas** and **Nafees @ Haddi**; charges under **Section 307** read with **34 IPC** (in the alternate/additionally) are framed against accused, namely, **Mohd. Rehan @ Gaonwala, Shahzada Irfan @ Lala** and **Gayasuddin @ Gayas**; and charges under **Section 307** read with **34 IPC** (in the alternate/additionally) are framed against accused, namely, **Mohd. Rehan @ Gaonwala** and **Nafees @ Haddi**. The said charges are read out to the accused persons in vernacular language and upon the accused persons comprehending the same, they have pleaded not guilty and claimed trial.

¹⁶ *S.K. Khaja v. State of Maharashtra*, 2023 SCC OnLine SC 1093; *Veer Bahadur Singh v. State*, 2015 SCC OnLine Del 8223 and *State of M.P. v. Kanha*, (2019) 3 SCC 605.

¹⁷ *State of Tamil Nadu by Inspector of Police v. N. Suresh Ranjan & Ors.*, (2014) 11 SCC 709.

9. List for P.E. on **29.05.2024**.
10. **Issue summons against PW Mohd. Tahir, concerned officer, M/s. Vantage Integrated Security Solution Pvt. Ltd. along with the concerned IO** for the next date of hearing.

(Abhishek Goyal)
ASJ-03, Central District,
Tis Hazari Courts, Delhi
26.04.2024