

State Vs. Irshad @ Bunty & Anr.
CNR No.: DLCT01-011357-2022
SC No.: 508/2022
FIR No.:148/2022
U/S.: 394/397/34 IPC
PS.: Nabi Karim

02.07.2024

Present: Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Mohd. Monish, Ld. Counsel for the accused,
namely, Irshad @ Bunty (*through video conferencing*).
Mr. Areeb Ahmad, Ld. Counsel for the accused,
namely, Bilal.
Both the accused persons, namely, Irshad @ Bunty
and Bilal are present.

ORDER ON CHARGE

1. By means of the present order, this Court would determine whether the accused, namely, Bilal (*hereinafter referred to as the 'accused'*) is to be charged for the offence(s) alleged against him in the chargesheet or for any other offence or whether the accused is to be discharged. In particular, this court would decide the accused's application under Section 227 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*), seeking discharge. Pertinent to outrightly note that charges have already been framed against the co-accused, namely, Irshad @ Bunty pursuant to order dated 13.10.2022, passed by the Ld. Predecessor Judge.

2. Succinctly, the case of the prosecution is that on 15.02.2022, on receipt of PCR call *vide* DD No. 5A, the concerned police official(s) reached at LHMC Hospital, where they received the MLC No. 261/2024 of the victim Mohd. Ejaj (name of the victim, stated to be wrongly mentioned under the MLC as Mohd. Ehsan), *inter alia* recording that the victim had suffered '*wound*

mark + over abd.’. Subsequently, the victim tendered his statement before the concerned police official wherein he asserted that on 14.02.2022, while he/the victim was present along with his friend, namely, Sameer at *Raunak Machine wali Gali*, at around 10.30 p.m., CCL ‘S@B’, who used to reside at the *kabristaan*/graveyard, reached there along with his associate (subsequently disclosed as accused, namely, Sanju) and demanded the victim’s phone from him. However, when the victim refused, the person accompanying the CCL threatened the victim by uttering “*apna phone de de, nahi to tujhe marenge*”. However, as the victim persevered not to succumb to the demand of the said persons, the person accompanying the CCL/accused Sanju grabbed the victim from behind (*meri peeche se meri koli bhar li*), while the CCL snatched the victim’s phone of A15-S Oppo make, blue in colour from him. As the said persons started fleeing from there, the victim demanded his phone back, however, the said persons asked the victim to follow them. Thereupon, the victim, following the said persons, reached a room where two persons/co-accused persons, namely, Bilal @ Billu and Irshad @ Bunty were already present. On the victim’s reaching there, all the four persons started beating the victims with kicks and punches and when the victim demanded his phone back, threatened to kill him. In the said process, the accused Bilal stated, “*tu Bunty bhai ko nahi janta hai.*” Soon thereafter, accused Bilal @ Billu, Irshad @ Bunty and the aforementioned third person/accused, Sanju grabbed hold of the victim while the CCL took out a knife/*chaku* from his pocket and inflicted injury on the victim’s stomach using the same. Thereupon, accused Bilal asked the victim to leave the said spot as well as all the said persons too fled from the spot. Pertinently, under the

instant factual background, upon registration of the FIR, the investigation in the present case ensued, whereupon, accused Irshad @ Bunty and CCL 'S@B', were apprehended. Initially, the whereabouts of accused Bilal were unknown. However, subsequently, upon the accused, Bilal being granted anticipator bail by the Ld. Roster Judge, was made to join the investigation and on conclusion of said investigation, supplementary chargesheet was filed against the accused.

3. Ld. Addl. PP for the State submitted that the facts and circumstances specified under the charge sheet, including the documents placed on record, are sufficient to demonstrate a *prima facie* case against the accused as specified therein. Further, as per the Ld. Addl. PP for the State, reasonable grounds exist to proceed with the framing of said charge(s) against him.

4. *Per contra*, Ld. Counsel for the accused submitted that no case/charge against the accused is even *prima facie* established and that the accused has been falsely implicated in the present case. Ld. Counsel further submitted that, even otherwise, there are serious infirmities in the investigation and that no intention and/or knowledge for the offences, as specified under the chargesheet is even *prima facie* established. As per the Ld. Counsel, from a conjoint reading of the statement of the 'so called' victim and the disclosure statements of the co-accused persons, it would be apparent that there are serious ambiguities in the said statements, besides no specific role has been attributed to the accused even under the victim's statement. Ld. Counsel further submitted that from the material placed on record, the element of 'common intention' is not forthcoming. On the contrary, as per the Ld. Counsel, when the CCTV footage filed along with the

accused's application under Section 227 of Cr.P.C. is considered, it would be clear that the victim and accused were standing next to each other immediately succeeding the alleged time of incident, belying the case of the prosecution that the accused was one of the perpetrators of the offence. Accordingly, the Ld. Counsel prayed that the accused be discharged at the outset. In support of the said contention, reliance was placed upon decisions in; ***State of Orrissa v. Arjun Dass Agarwal, AIR 1999 SC 3229*** and ***State of Uttar Pradesh v. Sabrunnisa, AIR 2009 SC 3182***.

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), including the contents of the chargesheet/supplementary chargesheets and the accused's aforementioned application, thoroughly perused.

6. At the outset, 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 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

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

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

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

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

the time of framing of charge. Relevant to further note that it is equally a settled law⁵ that at the stage of framing of charge, only the police report is required to be considered and the defence of the accused cannot be looked into. In fact, the Hon'ble Supreme Court in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, 2023 SCC OnLine SC 1294, while explicating the law in this regard, remarked as under;

“8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held...

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.”

(Emphasis supplied)

⁵ *State Anti-Corruption Bureau, Hyderabad & Anr. v. P. Suryaprakasam*, (1999) SCC (Cri.) 373 and *State of Orissa v. Debendra Nath Padhi*, 2005 (1) SCC 568
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7. Here, it is further pertinent to observe that, though, sifting of evidence is permissible⁶ for limited purpose at the stage of framing of charge, however, scanning of evidence in detail is not. Concomitantly, it is trite law⁷ that the inconsistency in the material produced by the prosecution⁸ or defect in investigation⁹, cannot be looked into for discharge of an accused, in the absence of full-fledged trial. Needless to further emphasize¹⁰ at the stage of charge, court is not even required to record detailed reasons as to why charge is framed, rather¹¹, 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 fact¹², it is only when no case is made out even after presuming entire prosecution evidence, only then can an accused be discharged. Needless to accentuate that it is a settled law¹³, “*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.*”

8. Therefore, being wary of the aforementioned principles, in light of the arguments addressed by the Ld. Counsel for accused as well as by Ld. Addl. PP for the State, this Court, outrightly observes that from the facts and circumstances of the case,

⁶ *State of Maharashtra v. Priya Sharan Maharaj & Ors.*, (1997) 4 SCC 393

⁷ *Sheoraj Singh Ahlawat v. State of U.P.*, (2013) 11 SCC 476

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

⁹ *State of Tamil Nadu by Inspector of Police v. N. Suresh Ranjan & Ors.*, (2014) 11 SCC 709

¹⁰ *Bhawna Bai v. Dhanshyam & Ors.*, (2020) 2 SCC 217

¹¹ *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

¹² *Manjit Singh Viridi v. Hussain Mohammed Shattaf*, (2023) 7 SCC 633

¹³ *Sonu Gupta Vs. Deepak Gupta & Ors.*, (2015) 3 SCC 424

material/documents placed on record, including the contents of the charge-sheet/supplementary chargesheets, statements of witnesses and MLC of the victim, *prima facie* case under Sections 394/34 IPC and 307/34 IPC stands established against the accused, namely, Bilal. 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, besides there are witness(es) who can depose against him. In so far, as the contention of the Ld. Counsel for the accused regarding the alleged infirmity in investigation is concerned, this Court unambiguously observes that it is a settled law¹⁴ that mere defect in investigation cannot be a ground for discharge. Further, the contention of Ld. Counsel pertaining to the alleged inconsistency or discrepancies in the statements of the witnesses and that of co-accused persons, as aforementioned, are subject matter of trial, which cannot be delved into at this stage. Pertinent to further note there that in light of the aforementioned judicial dictates, this court is precluded from considering the CCTV footage/material, filed along with the accused's application under Section 227 Cr.P.C. Even otherwise, the presumption that Ld. Counsel for the accused desires this Court to draw from the said video footage, i.e., since the victim could allegedly be seen with the accused immediately after the incident, he could not have been the perpetrator of the alleged incident, cannot be drawn/raised by this Court, at this stage, considering that victim has attributed specific role against the accused in his statement before the concerned police official. Needless to reiterate that the said fact can only be scrutinized during the trial. Apposite to further note at this stage that, though, this Court

¹⁴ *State of Tamil Nadu by Inspector of Police v. N. Suresh Ranjan & Ors., (2014) 11 SCC 709.*
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though holds highest regard for the judgments cited by the Ld. Counsel for the accused persons, however, the same would not come to the aid and/or rescue of the accused persons, as the facts and circumstances as well as the stage of the present proceedings are clearly distinguishable. Consequently, in the considered opinion of this court, no grounds/reasons for discharge of the accused are made out in the present case.

9. Accordingly, in view of the foregoing, charge(s) under **Sections 394/34 IPC** and **307/34 IPC** are framed against accused, namely, **Bilal**. The said charges are read out to the accused in vernacular language to which, he has pleaded not guilty and claimed trial.

10. List for P.E. on **13.09.2024**.

11. **Issue summons against PW-1 Mohd. Ejaj and PW-5 Mohd. Anwar** along with the **concerned IO** for the next date of hearing.

(Abhishek Goyal)
ASJ-03, Central District,
Tis Hazari Courts, Delhi
02.07.2024