

CNR No. DLNT01-008898-2023
SC No. 514/2023
State vs. Shahnwaz @ Pradhan & Anr.
FIR No. 438/2023
PS: S.P. Badli
U/s 392/397/411/34 IPC

20.09.2023

Present : Mr. Girish Giri, Ld. Addl. PP for the State.

Accused Shahnwaz @ Pradhan in JC, with counsel

Mr. Deepak Kumar, who has filed his vakalatnama.

Accused Amarjeet @ Kalia in JC, with LAC Mr.

J.K. Kalson.

Arguments on the point of charge heard. Ld. Counsels for both the accused persons have conceded the charges and have prayed that appropriate charges be framed against the accused persons.

Perusal of the record including the charge-sheet, the complaint of the complainant and other documents, which have been placed on record, which clearly show that the complainant, after being put under the fear with a deadly weapon i.e. knife, by the accused Amarjeet @ Kalia, both the accused persons in furtherance of their common intention as well as common intention with other two associates (yet absconding), was robbed of silver chain, two silver rings, cash amount of Rs. 2600/-, key of truck no. HR-46F-4974, leather bag containing clothes and mobile phone having two sim cards i.e. 8628835321, 9353901628, mobile charger, copies of aadhar cards and license and further cash amount of Rs. 3400/-, from his possession and from his truck. After committing the robbery, accused persons

fled away but the complainant soon got assistance of police personnel and on the motorcycle of police personnel, the accused persons were followed and out of the said four persons, two accused persons i.e. accused Shahnawaz @ Pradhan and Amarjeet @ Kalia were apprehended and robbed articles were recovered from them.

It is a settled proposition of law, that at the time of framing of charge, the Court is not required to marshal any evidence and only grave suspicion is to be seen and when grave suspicion arises, charge can be framed against the accused. Reliance can be placed upon *Alpana Dass v. CBI* 132 (2006) DLT 85.

In the case of *Union of India v. Prafulla Kumar Samal* 1979 SSC (3) 609, their lordship laid down the parameters that must weigh in the mind of the Court while considering the issue on charge. It was observed as under:

(i) That the Judge while considering the question of framing of charges under Section 227 of the Code has the undoubted power to shift 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;

(ii) 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.

(iii) 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.

(iv) That in exercising his jurisdiction u/s.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.

Guided by the said judgment, it can safely be observed that at the time of charge, the court does not have to weigh the evidence collected by the prosecution on the scale, which would be applicable after the prosecution has led its evidence.

Adverting back to the case in hand, in the present case, there is sufficient material available on record to frame the charge against both the accused u/s 392/34 IPC, u/s 411 IPC and a separate charge u/s 397 IPC against accused Amarjeet @ Kalia.

As far as offence under Arms Act is concerned, though the recovery of a knife has been shown by the prosecution, but the same was at the instance of the complainant and not from the possession of any accused, and therefore, in my opinion no offence under Arms Act is made out against any accused.

Accordingly, the formal charges have been framed against both the accused persons, to which they plead not guilty and claim trial.

Matter be listed for PE on 18.10.2023. Complainant be summoned for the next date of hearing. IO be also summoned.

(SEEMA MAINI)
Principal District & Sessions Judge
North District/Rohini Courts/Delhi
20.09.2023