

SC No. 120/2023
State Vs. Amaan Khan & Ors.
FIR No. 715/2022
P.S: Jafrabad

30.05.2024

Present: Sh. Virender Singh, Ld. Addl. PP for the State.
All accused persons are produced from JC.
Sh. Ikrar Siddiqui, Ld. Counsel for accused Amaan,
Harish @ Arish and Almas Khan.
Sh. B.K. Jha, Ld. Counsel for accused Abid @ Sonu @
Nakka.

Arguments heard on point of charge. Record perused.

ORDER ON CHARGE

1. The Charge-sheet in this case has been filed U/Sec. 302/201/120B/34 IPC. Ld. Addl. P.P. for the State submits that a U/s. 302/34 IPC and u/s. 201 r/w Section 302/34 IPC is made out against the accused persons namely Amaan and Atif and a case u/s. 120-B/302 IPC is made out against all the accused persons.

Per contra, Ld. Counsels for the accused persons have argued that accused persons have been falsely implicated in the present case and no case is made out against them, therefore, they be discharged in the present matter.

2. It is settled preposition of law that at the stage of framing of charge, probative value of the material on record cannot be gone into. If on the basis of material on record, the Court could come to the conclusion that the commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence, it can frame the charge, though for

conviction, the conclusion is required to be that the accused have committed the offence. The material brought on record by the Prosecution is to be believed as true at the stage of framing of charge. Truthfulness, sufficiency and acceptability of the material which has been produced can be tested only at the stage of Trial.

3. Section 227 Cr.PC has been re-produced herein for the ready reference :-

Section 227 Cr.PC : *Discharge* - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

4. Section 228 Cr.PC has been re-produced herein for the ready reference :-

Section 228 Cr.PC : *Framing of charge* - (1) 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 which -

(a) is not exclusively triable by the Court of Sessions, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

5. It has been held by Hon'ble Supreme Court in **Captain Manjit Singh Viridi (Retd.) Vs. Hussain Mohammed Shattaf & Ors., Criminal Appeal No.1399 of 2023, decided on May, 18, 2023:**

“11. The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the Trial Court had not yet framed the charges. Immediately after filing of chargesheet, application for discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the Criminal Appeal No. 1399 of 2023 trial is allowed to proceed, the same would amount to abuse of process of the Court.

12. The law on the point has been summarised in a recent judgment of this Court in State of Rajasthan v. Ashok Kumar Kashyap². Relevant paras are extracted below: -

“11.1. In P. Vijayan v. State of Kerala, (2010) 2 SCC 398, this Court had an occasion to consider Section 227 CrPC What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not

there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to 2 (2021) 11 SCC 191 Criminal Appeal No. 1399 of 2023 determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11.2. In the recent decision of this Court in State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515, one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under:

“25. The High Court [M.R.Hiremath v. State, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial

court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, Criminal Appeal No. 1399 of 2023 advertent to the earlier decisions on the subject, this Court held:

‘29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.’

6. In the case reported as **State of Tamil Nadu Vs. N. Suresh Rajan and Ors [2014 (4) SCJ 135]**, the Hon’ble Supreme Court of India has summed up the law relating to framing of charge as follows: -

“True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if

the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. vs. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

7. In the present case at hand, the factual matrix as per the case of the prosecution is that the accused Almas @ Salman @ Allu was having apprehension that the victim / deceased Amir @ Tori has secretly informed the Police regarding the accused Almas due to which accused Almas @ salman @ Allu got apprehended; in order to take revenge from the victim/deceased Amri @ Tori, accused Almas along with his brothers, father, khaala (aunt) and his friends made a plan and conspired to murder the victim Amir @ Tori. Accordingly, in execution of this plan and conspiracy hatched between all the accused persons, accused Amaan and Atif brutally murdered the victim Amir @ Tori in a pre-meditated manner.

It is further stated in the charge sheet that though the accused persons namely Almas @ salman @ Allu and Asad @ Totla

were in Jail, the co-accused Abid @ Sonu @ Nakka was in continuously touch with them through phone in the Jail.

Perusal of PM report reveals that cause of death of victim / deceased Amir @ Tori was combined effect of Hemorrhagic shock and cranio-cerebral damage. Hemorrhagic shock is caused due to antemortem injuries to the chest and abdomen produced by sharp single edged cutting/stabbing weapon via injuries No.24 to 28 and Cranio-cerebral damage is caused due to antemortem injury to head produced by blunt force impact via injury no.1 and 2. Injury No.1,2, 24, 25, 26, 27 and 28 are sufficient to cause death both individually and collectively in the ordinary course of nature. All injuries are antemortem in nature.

Allegations i.e. the case of Prosecution taken on its face value discloses the ingredients of the offences punishable U/s 302/34, 201 r/w 302/34, 120B r/w 302 IPC.

8. Thus, upon consideration of the record of the case including statement of the witnesses and hearing submissions from both the sides, this Court is of the considered opinion that there is sufficient material/ grounds on record to presume that the accused persons namely Amaan and Atif have committed the offences punishable U/s. 302/34 IPC, 201 r/w 302/34, 120B r/w 302 IPC. and all the accused persons have committed an offence punishable u/s. 120B r/w 302 IPC.

Therefore, a case for trial under the aforesaid offences is made out, against the accused persons.

9. Accordingly, charge a Charge under Section 302/34

IPC and u/s. 201 r/w Section 302/34 IPC is framed against the accused persons namely Amaan and Atif and a charge under Section 120-B/302 IPC is framed against all the accused persons. The Charges are read over and explained to them in vernacular, to which they pleaded not guilty and claimed trial.

10. Put up for PE on 29.08.2024.

(SURABHI SHARMA VATS)
ASJ-04, Shahdara/KKD Courts,
Delhi/30.05.2024