

IN THE COURT OF MS. VRINDA KUMARI,
ADDITIONAL SESSIONS JUDGE-02, SOUTH
DISTRICT, SAKET COURTS, NEW DELHI

CNR NO. DLST01-003960-2021

SC NO. 173/2021

FIR NO. 92/2020

PS SANGAM VIHAR

U/S 307/34 IPC & 25/27 ARMS ACT

IN THE MATTER OF

State

Versus

- 1. Ved Prakash @ Lala**
S/o Sh. Satpal
R/o H. No. H-16/711, Sangam Vihar,
New Delhi
- 2. Ajay Awana @ Chintu**
S/o Sh. Dhan Pal
R/o H. No. H-16/1912, Sangam Vihar,
New Delhi
- 3. Mohit Gurjar**
S/o Sh. Ratan Singh
R/o H. No. H-16/1264, Sangam Vihar,
New Delhi
- 4. Aakash Sharma**
S/o Sh. Om Shankar Sharma
R/o H. No. H-16/706, Sangam Vihar,
New Delhi

..... Accused

ORDER ON CHARGE

1. Vide this Order, I shall decide the point of charge in the present case.

2. I have heard detailed arguments and have perused the record carefully.

3. The contention of Ld. Counsel for accused Ved Prakash @ Lala is that he has been falsely implicated in the present case as accused is Bad Character of the area. It is submitted that weapon of offence was seized later on. He was not apprehended from the spot. It is submitted that if shots had been fired from behind and the injured fell down, the injured could not have seen who the actual assailant was.

4. Ld. Counsel for accused Akash Sharma has argued that there is no corroboration of the allegation that accused Aakash Sharma had accompanied the accused persons. It is submitted that Aakash Sharma was a mute spectator and had no role to play. It is submitted that he has been falsely implicated in the present case. It is further submitted that furtherance of common intention is not made out in the present case.

5. Ld. Counsel for accused Ajay Awana @ Chintu and Mohit Gurjar has argued that both the these accused persons have been falsely implicated in the present case.

6. Ld. LAC for accused Ved Prakash @ Lala has argued that Section 307 IPC is not made out in the present case as the injured suffered only a scratch and the nature of weapon is mentioned as 'unknown' in the MLC.

7. Ld. Additional PP for State has submitted that there is sufficient material on record to frame charge against the accused persons.

8. I have considered the rival contentions.

9. There is a specific allegation against the accused persons that on 20.03.2020 at about 10:00PM, when complainant/injured was climbing the stairs for going to the house from his shop to have dinner, he heard fire shots. He saw accused Ved Prakash @ Lala, Ajay Awana @ Chintu, Aakash, Rahul (not traced out) and one more boy present at the spot. The identity of the fifth boy was later revealed to be accused Mohit Gurjar. Complainant also saw accused Ved Prakash @ Lala wielding a pistol and firing the shots. One bullet hit the wall while the other bullet scrapped the complainant on his hip. As per the MLC of the complainant/injured, he suffered scratch in his right side gluteal region.

10. Charge-sheet discloses a bullet mark on the wall while two spent / empty cartridges and two pieces of lead were recovered from the spot. It corroborates the allegation of the complainant against the accused persons. Firing of shots at the complainant by the accused calls for framing of charge u/s 307 IPC even though it resulted in a simple injury i.e. scratch. Country made pistol with two live rounds were recovered from the possession of accused Ved Prakash on 21.03.2020 when he was apprehended at Gali No. 16, near Shiv Mandir. FSL Result and sanction u/s 39 of the Arms Act is also recovered in respect of this fire arm.

11. All the contentions of Ld. Counsels of the accused persons are a matter of trial. At the stage of framing of charge, the Court is only required to see whether the circumstances on record give rise to a grave suspicion against the accused persons or not.

12. In **Sajjan Kumar Vs. CBI (2010) 9 SCC 368**, Hon'ble Supreme Court of India has held as follows:

“17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the

charges under Section 227 of the Cr.P.C. has the undoubted power to sift 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. The test to determine prima facie case would depend upon the facts of each case.

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 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be

gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

13. In view of above discussion, ***prima facie***, there is sufficient material on record to frame charge against the accused persons as follows :

(a) **Accused Ved Prakash @ Lala, Ajay Awana @ Chintu, Mohit Gurjar and Aakash Sharma :**

offence punishable u/s 307/34 IPC;
(b) Accused Ved Prakash @ Lala : offence
punishable (i) u/s 307 IPC and (ii) u/s 25/27
Arms Act.

PRONOUNCED IN OPEN COURT ON THIS 28th DAY OF
FEBRUARY 2023

(Vrinda Kumari)
ASJ-02, South District
Saket Courts, New Delhi.