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

**CNR NO. DLST01-002655-2019**

**SC NO. 248/2019**
**FIR NO. 639/2017**
**PS SANGAM VIHAR**
**U/s 186/353/332/307/34 IPC & 25/27/54/59 ARMS ACT**

**IN THE MATTER OF**

**State**

**Versus**

**Prince**
**S/o Sh. Raju**
**R/o House No. 625, J. J. Colony,**
**Tigri, 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 case of the prosecution is that one 'M' and accused Prince were wanted in case FIR No. 636/2017 PS Sangam Vihar. Upon secret information, police party raided the room on the first

floor of G-227, J. J. Camp, Tigri, Sangam Vihar on 05.12.2017 at around 12:40 PM. When the raiding team reached the spot, Ct. Pankaj (complainant) who was also part of the raiding team went towards the room to apprehend them. Two boys were found present inside the room. When Ct. Pankaj tried to apprehend them, one of those boys whose name was later revealed to be CCL 'S @ M' took out a pistol and fired at Ct. Pankaj who saved himself by ducking. Ct. Pankaj also took out his service revolver and fired a shot in self defence. In the meantime, Ct. Jitender also reached there with the staff and nabbed CCL 'S @ M' with his semi-automatic pistol. Meanwhile, the other boy whose name was later revealed to be Prince (present accused) fled from the spot after giving a push to complainant Ct. Pankaj. After investigation, charge-sheet was filed and offences punishable u/s 186/353/332/307/34 IPC and 25/54/59 Arms Act were pressed against accused Prince while PIR was filed in respect of CCL 'S @ M' before the J J Board at Delhi Gate.

4. Framing of charge has been opposed by Ld. Counsel for the accused on the ground that since no complaint u/s 195 Cr.P.C. has been filed by the complainant or his administrative superior, the entire proceedings have got vitiated and even cognizance in the present case could not have been taken. It is submitted that in these circumstances, accused is liable to be discharged.

5. Ld. Counsel for the accused has relied upon (i)

***Gurinder Singh Vs State 63 (1996) DLT 104,*** (ii) ***Judgment dated 08.01.2019 of Hon'ble High Court of Delhi*** in ***Crl. M C No. 662/2018*** titled as ***Mohan Kukreja Vs The State Govt of NCT of Delhi & Anr.,*** (iii) ***Judgment dated 20.11.1995*** of ***Hon'ble High Court of Punjab & Haryana at Chandigarh*** in ***Crl. Misc No. 5526-M of 1994*** titled as ***Jagtar Singh Vs UT Chandigarh***, (iv) ***Judgment dated 10.09.1990 of Hon'ble High Court of Punjab & Haryana in Crl. Misc No. 8114-M of 1987*** titled as ***Bhagat Ram Vs The State of Punjab***, (v) ***Chief of Army Staff & Ors Vs Major S. P. Chadha 1991 AIR 460*** and (vi) ***Judgment dated 06.07.1994 of Hon'ble Punjab & Haryana High Court in Crl. Misc No. 7947-M of 1993 titled as Swaran Singh Vs State of Punjab.***

6. I have considered above-said case laws carefully. In *Gurinder Singh's case*, the petitioners did not have the intention to prevent or deter any police official from discharging their duties as public servants. Petitioners were fighting with two other persons when one constable intervened and consequently his shirt was torn. Petitioners were not armed and it was held that from the facts of the case, it could not be inferred that the petitioners intended to prevent or deter the constable or any other police official in discharge of their official duties. The facts of *Gurinder's case* are completely different from those in the present case. In *Mohan Kukreja's case*, the only offence alleged against the petitioner was Section 188 IPC and it was held that no Court could take cognizance of an offence u/s 188 IPC except on a complaint u/s 195 Cr.P.C. of the public

servant. In *Jagtar Singh's case* also, the only offence alleged was that under Section 188 IPC. *Mohan Kukreja's case* and *Jagtar Singh's case* also are distinguishable on facts. In *Bhagat Ram's case*, it was held by Hon'ble High Court of Punjab and Haryana that offence punishable u/s 332 IPC was an aggravated form of Section 186 IPC and since both the offences arose out of the same transaction, it could well be said that the trial court was not competent to take cognizance of the offence u/s 332 IPC also in absence of complaint u/s 195(1) Cr.P.C. In *Swaran Singh's case*, the offences punishable u/s 186/353 IPC were pressed against the petitioner. In absence of complaint u/s 195(1) Cr.P.C., the petition to the extent of Section 186 alone was quashed. *Swaran Singh's case* does not help the accused.

7. Ld. Additional PP for State on the other hand has argued that the FIR was registered on the complaint of Ct. Pankaj himself which should be considered as a complaint u/s 195 Cr.P.C.

8. ***Section 2(d) Cr.P.C.*** defines '*complaint*' as follows :

> ***2. Definitions.–*** *In this Code, unless the context otherwise requires,–*
>
> *(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that such person, whether known or unknown, has committed an offence, but does*

*not include a police report.*

9. By no stretch of imagination can the statement of Ct. Pankaj on the basis of which the present FIR was registered can be considered a complaint within a meaning of Section 2(d) Cr.P.C. as it is not addressed to the Metropolitan Magistrate concerned. For want of complaint u/s 195 Cr.P.C., therefore, charge for the offence punishable u/s 186 IPC does not stand against the accused.

10. I shall now consider the submission of Ld. Counsel for the accused that in absence of the complaint u/s 195 Cr.P.C., the entire proceedings in the present FIR are required to be quashed and the accused is liable to be discharged.

11. I shall first refer to ***Durgacharan Naik & Ors Vs State of Orrisa 1966 SCR (3) 636*** wherein it has been held by Hon'ble Supreme Court of India as follows :

> *"We pass on to consider the next contention of the appellants that the conviction of the appellants under s. 353, Indian Penal Code illegal because there is a contravention of s.195(1) of the Criminal Procedure Code which requires a complaint in writing by the process server or the A.S.I. It was submitted that the charge under s. 35, Indian Penal Code is based upon the same facts as the charge under s. 186, Indian*

*Penal Code and no cognizance could be taken of the offence under S. 186, Indian Penal Code unless there was a complaint in writing as required by s. 195(1) of the Criminal Procedure Code. It was argued that the conviction under s. 353, Indian Penal Code is tantamount, in the circumstances of this case, to a circumvention of the requirement of s. 195(1) of the Criminal Procedure Code and the conviction of the appellants under S. 353, Indian Penal Code by the High Court was, therefore, vitiated in law. We are unable to accept this argument as correct. It is true that most of the allegations in this case upon which the charge under s. 353, Indian Penal Code is based are the same as those constituting the charge under s. 186, Indian Penal Code but it cannot be ignored that ss. 186 and 353, Indian Penal Code relate to two distinct offences and while the offence under the latter section is a cognizable offence, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under s. 353, Indian Penal Code the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of*

*hte Indian Penal Code dealing with Contempts of the lawful authority of public servants, while s. 353 occurs in Ch. XVI regarding the offences affecting the human body. It is well-established that s. 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section. In Satis Chandra Chakravati v. Ram Dayal De (1) it was held by Full Bench of the Calcutta High Court that where the maker of a single statement is guilty of two distinct offences, one under s. 211, Indian Penal Code, which is an offence against public justice, and the other an offence under S. 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the court concerned, as the Criminal Procedure Code has not provided for sanction of court (1) 24 C.W.N. 982. for taking cognizance of that offence. It was said that the two offences being fundamentally distinct in nature, could be separately taken cognizance of. That they are distinct in character is patent from the fact that the former is made non-compoundable, while the latter remains compoundable; in one for the initiation of the proceedings the legislature requires the sanction of the court under S. 195, Criminal*

*Procedure Code, while in the other, cognizance can be taken of the offence on the complaint of the person defamed. It is pointed out in the Full Bench case that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of ss. 195 to 199 of the Code of Criminal Procedure. The decision of the Calcutta case has been quoted with approval by this Court in Basir-ul-Huq and Others v. The State of West Bengal (1) in which it was held that if the allegations made in a false report disclose two distinct offences, one against a public servant and the other against a private individual, the latter is not debarred by the provisions of s. 195, Criminal Procedure Code, from seeking redress for the offence committed against him.*

*In the present case, therefore, we are of the opinion that S. 195, Criminal Procedure Code does not bar the trial of the appellants for the distinct offence under s. 353 of the Indian Penal Code, though it is practically based on the same facts as for the prosecution under s. 186, Indian Penal Code."*

12. In ***Gurcharan Singh Arora & Anr. Vs The State 2002 CriLJ 2130,*** it has been held by Hon'ble High Court of Delhi as follows :

> *"... the recent Supreme Court decision in Pankaj Aggarwal and Ors. v. State of Delhi and Anr. 2001(3) Crimes 361 (SC) wherein their Lordships of the Supreme Court after referring to the earlier decision in Durga Charan Naik v. State of Orrisa, held that the offences under Sections 186, and 353 or 332 IPC are distinct and in the absence of a compliant under Section 195 Cr.P.C. regarding the offence under Section 186 IPC, trial for the offence under Section 353 or 332 IPC is not barred. It was held:-*
>
> *"But in view of the judgment of this Court in , where the Court has analysed the provisions of Section 353, IPC and Section 186, IPC and held that the two are distinct offences and the quality of the offence is also different, we are of the opinion that judgment of the Punjab High Court is not correct in law and has taken a view contrary to the law laid down by this Court. What has been stated earlier in the aforesaid case in relation to the provisions of Section 353, IPC would equally apply to the provisions of Section 332 of the IPC."*

13. In ***Judgment dated 02.05.2016 of Hon'ble High Court of Delhi in Crl. Revision Petition No. 277/2012 titled as Hitender Singh Vs NCT of Delhi,*** it has been held that *so far as offence punishable u/s 353 IPC is concerned, it being a distinct offence, even if there was no complaint u/s 195 Cr.P.C., he cannot be discharged.*

14. The above-said case laws show that in absence of complaint u/s 195 Cr.P.C., cognizance of the offence u/s 186 IPC cannot be taken, however, trial in respect of other offences including offences punishable u/s 332 IPC and u/s 353 IPC is not barred.

15. ***Section 319 IPC*** defines '*hurt'* as follows :

> ***Hurt.–*** *Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.*

16. In light of the definition of 'hurt' which includes bodily pain, the act of giving a push to the public servant by the accused falls within the ambit of Section 332 IPC.

17. There is a specific allegation that in furtherance of their common intention to cause hurt to and assault Ct. Pankaj to deter him from discharging his official duty as public servant, CCL 'S @ M' fired shot at Ct. Pankaj. Taking advantage of the same, accused

Prince gave a push to Ct. Pankaj and fled from the spot while CCL 'S @ M' was nabbed on the spot. The present case, therefore, squarely falls within the ambit of Section 332/353/307/34 IPC.

18. At the stage of framing of charge, only a *prima facie* case giving rise to grave suspicion is required to be seen.

19. 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."*

20. In view of above discussion, *prima facie,* **there is sufficient material on record to frame charge against accused Prince for the offences punishable u/s 332/353/307/34 IPC.**

**PRONOUNCED IN OPEN COURT ON THIS 25th DAY OF MAY 2023**

VRINDA KUMARI Digitally signed by VRINDA KUMARI Date: 2023.05.26 15:11:27 +0000

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