

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

CNR NO. DLST01-003488-2019

SC NO. 337/2019
FIR NO. 425/2018
PS Mehrauli

IN THE MATTER OF

State

Versus

- 1. Neeraj Dahiya**
S/o Sh. Raj Singh Dahiya
R/o D-163-164, Gali No.4, Freedom Fighter Enclave,
New Delhi
- 2. Naveen**
S/o Sh. Kuljeet Singh
R/o Vill- Malaha Majra, P.S.-Kundali,
Distt-Sonipat, Hariyana
- 3. Devender Singh Balhara @ Debu**
S/o Sh. Ranveer Singh
R/o H.No. 23, Lane No.9, Forest Lane,
Sainik Farm, Neb Sarai,
New Delhi **..... Accused persons**

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. Contention of Ld. Counsel for the accused persons is that a cross FIR u/s 308 IPC in respect of the same incident has also been registered against the present complainant party on the complaint of Neeraj Dahiya (accused herein). It is further submitted that complainant is an advocate and he is in a habit of lodging complaints against those who build houses in the area. It is submitted that the actual incident has been narrated by witness Kamal Chowkidar in his statement u/s 161 Cr.P.C. It is further submitted that accused Neeraj and Naveen had also received injuries in the present incident and the injuries of accused Neeraj were opined to be grievous. It is submitted that the complainant, on the other hand, suffered simple injuries. The complainant also got his statement recorded at a belated stage and exaggerated the incident. The stolen properties were never recovered. Accused was not forced to consume any obnoxious substance. In absence of any corroboration, charge cannot be framed against the accused. It is further submitted that in absence of any independent witness, the charge under the SC & ST Act cannot be framed. It is further submitted that the complainant had tried to forcibly enter the building and tried to take photographs of the building. The Ld. Counsel for the accused persons has relied upon ***Judgment dated 18.08.2008 of Hon'ble Supreme Court of India in Crl. Appeal No. 1287 of 2008 (Arising out of Special Leave Petition (Crl.) No. 987***

of 2007) titled as Swaran Singh & Ors. Vs. State Through Standing Counsel & Anr. in support of their contention that unless castiest slurs are hurled at a place within public view, offence punishable u/s 3(1)(r)(s) of the SC & ST Act is not made out.

4. Ld. Addl. PP for State has submitted that complainant was forced to consume liquor by the accused persons and therefore section 3(1)(a) of the SC & ST Act is made out. It is further submitted that the complainant was dragged into the plot, tied on a chair, threatened and robbed. His car was also damaged. It is submitted that the offence punishable u/s 3(1)(r)(s), u/s 3(2)(v), u/s 3(1)(a) of the SC & ST Act as well as section 308/342/367/394/427/506/34 IPC are also made out against the accused persons.

5. I have considered the rival contentions.

6. In ***Swaran Singh's case***, it has been held as follows:

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a `Chamar') when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a

building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

7. In the present case, there is a categorical allegation that the accused persons obstructed the car being driven by the complainant Dinesh Kumar on 08.07.2018 at 10:15 PM. The accused Devender Balhara called upon his accomplices, "*utthao iss chamaar ki aulad ko aur aaj iska kissa hi khatam kar dete hain*". It has further been alleged that accused Devender Balhara and his accomplices dragged the complainant inside the plot, tied him to a chair, beat him up, pointed a pistol under his neck and hurled casteist slurs upon him. On the face of it, the first instance of hurling

of casteist slurs took place outside on the road/street which is a place within public view. Even though there is a specific allegation u/s 3(1)(r)(s) of the SC & ST Act against accused Devender Balhara, the allegation of hurling of casteist slurs against his accomplices are vague and general in nature. There is also nothing to show that the place in the under construction plot where subsequent instance of casteist slurs took place was within public view.

8. There is also an allegation against the accused persons that they forcibly poured alcohol in his mouth during the incident in question. Ld. Addl. PP for State has pressed for framing of charge u/s 3(1)(a) of the SC & ST Act even though the same has not been pressed in the present chargesheet. The perusal of chargesheet shows that blood sample of complainant Dinesh Kumar was also seized and preserved on 09.07.2018 itself. Since in the MLC, the doctor suspected *Breath Alcohol*, therefore, certain queries in this respect were put by the IO during investigation. Vide hand written letter dated 19.07.2018 addressed to ACP Defence Colony, Dr. Manish Kumar opined that as per the documents, the patient named Dinesh Kumar didn't state/ allege any history of forceful consumption of alcohol in his mouth.

9. Further, the preserved blood sample of the complainant was also sent to RFSL, Chanakyapuri for analysis vide correspondence dated 12.07.2018. As per the RFSL report no. RFSL 2018/C-689 dated 27.07.2018, it was opined that methyl and ethyl

alcohol could not be detected in the exhibit.

10. Even if it is assumed that the liquor had only been poured in his mouth and he had not consumed the same, the complainant has not specified as to which of the accused persons forcibly poured liquor in his mouth. In these circumstances, the Court does not find sufficient grounds to frame charge for the offence punishable u/s 3(1)(a) of the SC & ST Act against the accused persons.

11. Chargesheet further discloses that at the time of incident on 08.07.2018 at 10:15 PM, after taking the video/ photographs of the property being constructed by the accused persons, the complainant talked to a neighbour and, thereafter, as he started leaving the spot in his car. At this point of time, accused Devender Balhara with his 8 to 10 accomplices obstructed his car. Accused Devender Balhara then badly damaged his car with an iron rod, snatched the key of the car while his accomplices snatched the mobile phone, laptop and a bag containing his important documents. When he protested, accused Devender Balhara assaulted him with an iron rod and hit him on his head. He was forcibly dragged inside the plot, tied to a chair with rope and also beaten up. A pistol was pointed at him. One of the accomplices of the accused Devender Balhara snatched his gold ring, gold chain, cash amount in sum of Rs. 65,000/- which he was carrying in his pocket and his wallet containing Rs. 20,000/- in cash. The MLC and discharge summary

of the complainant show simple injuries i.e. abrasions over mid scalp in fronto-parietal area and on forehead. The complainant also suffered left subconjunctival bleed. Chest physiotherapy was also advised. The damaged car was seized. The complainant also handed over the bills of robbed mobile phone and gold articles to the IO. At the stage of framing of charge, the non recovery of stolen articles is not fatal to the case of prosecution and its impact would be assessed after trial. Further, there is a specific allegation that the complainant was dragged inside the plot where construction was going on and confined there. It calls for invoking section 342/34 IPC against the accused persons. The specific allegations against the accused persons disclose commission of offences punishable u/s 308/34 IPC, 342/34 IPC, 394/34 IPC, 427/34 IPC and 506/34 IPC.

12. From the facts of the case, it does not emerge that the complainant was abducted so that he may be subjected to or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of. The Court, therefore, does not find merit in the arguments of the State that the chargesheet discloses commission of offence punishable u/s 367 IPC. It is noted that section 367 IPC has not been pressed in the present chargesheet and the investigation conducted in the matter does not disclose such intention on the part of the accused persons.

13. The contentions of Ld. Counsel for the accused persons

in respect of false implications and there being inconsistencies in the case of prosecution are a matter of trial. So far as the contention related to the version of witness Kamal Chowkidar is concerned, its veracity is also subject matter of trial. It is noted that this witness was an employee of accused Devender Balhara. At the stage of framing of charge, only a *prima facie* case giving rise to grave suspicion is to be seen.

14. 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.”

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

- (I) Accused Devender Singh Balhara @ Debu: Offence punishable u/s 3(1)(r)(s) of the SC & ST Act;**
- (II) Accused Neeraj Dahiya, Naveen and Devender Singh Balhara @ Debu : Offence punishable u/s (i) 308/34 IPC, (ii) 342/34 IPC, (iii) 394/34 IPC, (iv) 427/34 IPC and (v) 506/34 IPC.**

**PRONOUNCED IN OPEN COURT ON THIS 23rd DAY OF
FEBRUARY 2023**

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