

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

**CNR NO. DLST01-005182-2019**

**SC NO. 460/2019**  
**FIR NO. 326/2018**  
**PS Fatehpur Beri**

**IN THE MATTER OF**

**State**

**Versus**

- 1. Deepak Sharma**  
**S/o Sh. Ramdeva Sharma**  
**R/o H. No. 09, Gali No. 1, Dera Mor,**  
**Fatehpur Beri, New Delhi**
- 2. Bhram Dutt Sharma @ Bubbly Sharma**  
**S/o Sh. Omprakash Sharma**  
**R/o H.No. 310, Gali No.1, Dera Mor,**  
**Fatehpur Beri, New Delhi**
- 3. Akshay Sharma @ Toni Sharma**  
**S/o Jitender Sharma**  
**R/o H. No. 09, Gali No. 1, Dera Mor,**  
**Fatehpur Beri, New Delhi**
- 4. Amit Sharma @ Sonu Sharma**  
**S/o Rajender Sharma**  
**R/o H. No. 10, Gali No. 1, behind petrol pump,**

**Dera Mor, Fatehpur Beri, New Delhi**

- 5. Jitender Sharma**  
**S/o Late Sh. Ramkishan Sharma**  
**R/o H. No. 09, Gali No. 1, Dera Mor,**  
**Fatehpur Beri, 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 the Ld. Counsel for the accused persons is that Section 3 (1)(s)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC & ST Act) is not attracted in the present case as incident had taken place inside the house. Apart from the accused persons and the family members of the complainant party, no other public/independent witness was present at the spot. It is further submitted that the accused persons have been falsely implicated in the present case and there are various inconsistencies in the case of the prosecution.

4. The contention of Ld. Addl. PP for State as also the complainant is that apart from other sections pressed in the

chargesheet, offence punishable u/s 451/354B IPC is also made out against the accused persons.

5. I have considered the rival contentions.

6. The case of the prosecution is that on 14.06.2018 at around 9:30 PM, the complainant 'R' was in her house with prosecutrix 'A' and prosecutrix 'M'. Her sons were on the roof. At that time, accused Jitender Sharma, Akshay Sharma @ Toni, Bhram Dutt Sharma @ Bubbly Sharma, Deepak Sharma, Amit Sharma @ Sonu along with 3 to 4 other persons trespassed into their house. Accused Jitender Sharma, Bhram Dutt Sharma @ Bubbly Sharma and Akshay Sharma @ Toni outraged the modesty of prosecutrix 'R', 'A' and 'M' and tore their clothes. Sons of the complainant, namely, Vinay Kumar, Lokesh and Neeraj Kumar rushed to save them. Upon this, the accused persons assaulted the complainant party with *dandas*, kick blows and fist blows. Accused Akshay Sharma @ Toni also assaulted 'R', tore her worn clothes and inappropriately hit her on her chest. Accused Jitender Sharma and Deepak Sharma hurled casteist slurs upon the complainant party. There is also a specific allegation that obscene abuses were also hurled at prosecutrix 'R', 'A' and 'M'. The accused party also criminally intimidated the complainant party.

7. The allegation regarding snatching of phone and a 2.50 tola gold chain of Lokesh by accused Amit Sharma @ Sonu could

not be substantiated during investigation.

8. The complainant party belongs to the Scheduled Castes Community and there is a specific allegation of outraging of modesty of the women in the complainant party by the accused Jitender Sharma, Bhrum Dutt Sharma @ Bubby and Akshay Sharma @ Toni. There are also allegations of hurling of obscene abuses by all the accused persons towards them. Section 3(1)(w)(i)(ii) of the SC & ST Act, 1989 is, therefore, attracted in the present case apart from section 354, 354B and 509 IPC.

9. Section 354 IPC and 509 IPC are scheduled offences as per the SC & ST Act, 1989 and therefore offence punishable u/s 3(2) (va) of the SC & ST Act, 1989 is made out against the accused persons.

10. The chargesheet *prima facie* discloses that the accused persons in furtherance of their common intention committed house tress pass in order to commit offence punishable with imprisonment. Section 451/34 IPC is, therefore, made out against all the accused persons.

11. The MLCs of the injured persons show that they all suffered simple injuries in the form of abrasions or swelling. It calls for framing of charge u/s 323/34 against all the accused persons.

12. Now I shall consider the allegation u/s 3(1)(r)(s) of the SC & ST Act, 1989. Contention of Ld. Counsel for the accused persons is that incident in question took place inside the house of the complainant party and there is no independent witness.

13. There is nothing in the chargesheet which would show that the accused persons had shut the door of the house of the complainant party after committing house tress pass. Whether or not the place where incident in question took place was within the public view is a matter is trial. The circumstances of absence of any independent witness in the present case is also a subject matter of trial. At this stage, the Court is only required to see a *prima facie* case giving rise to grave suspicion against the accused persons.

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. All the contentions of Ld. Counsels for the accused persons are a matter of trial. In view of the above discussion, *prima facie* there is sufficient material of record to frame charge against the accused persons as follows:

- (I) All accused persons: Offence punishable u/s 323/451/506/509/34 IPC & section 3(1)(w)(ii) of the SC & ST Act and section 3(2)(va) of the SC & ST Act;**
- (II) Jitender Sharma, Bhram Dutt Sharma @ Bubbly and Akshay Sharma @ Toni : Offence punishable u/s 354/354B IPC & section 3(1)(w)(i) of the SC &**

*ST Act and section 3(2)(va) of the SC & ST Act;*  
**(III)** *Jitender Sharma and Deepak Sharma: Offence*  
*punishable u/s 3(1)(r)(s) of the SC & ST Act.*

**PRONOUNCED IN OPEN COURT ON THIS 16<sup>th</sup> DAY OF  
FEBRUARY 2023**

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