

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

CNR NO. DLST01-006495-2022

SC NO. 321/2022
FIR NO. 296/2022
PS Sangam Vihar

IN THE MATTER OF

State

Versus

- 1. Hari Prasad Gupta**
S/o Sh. Gauri Shankar Gupta
R/o H. No. F-1/189, Sangam Vihar,
New Delhi
- 2. Kapil Gupta**
S/o Sh. Hari Prasad Gupta
R/o H. No. F-1/189, Sangam Vihar,
New Delhi
- 3. Akash Gupta**
S/o Sh. Hari Prasad Gupta
R/o H. No. F-1/189, Sangam Vihar,
New Delhi
- 4. Amit Gupta**
S/o Sh. Hari Prasad Gupta
R/o H. No. F-1/189, Sangam Vihar,
New Delhi
- 5. Suraj Gupta @ Bhim**
S/o Sh. Anil Gupta

**R/o H. No. F-3/556, Sangam Vihar,
New Delhi**

and also at

**H.No. C-865-866, Sangam Vihar,
New Delhi**

**6. Yogesh Gupta @ Ajeet
S/o Sh. Anil Gupta
R/o H. No. C-865, Sangam Vihar,
New Delhi**

**7. Smt. Mithlesh Gupta
W/o Sh. Anil Gupta
R/o H. No. C-866, Sangam Vihar,
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 the complainant has not specified as to who hurled casteist slurs at the complainant and what specific slurs were hurled by the accused persons. It is submitted that in respect of the same incident, an FIR bearing no. 392/2022 u/s 354 IPC PS Sangam Vihar had been got registered by the accused party against the complainant

party in which the independent witnesses, namely, Raj Bahadur and Saurav have also been named as accused persons. It is further submitted that these two persons cannot be termed as independent witnesses as they had filed complaint against the complainant party earlier. It is further submitted that all the injured persons had come to the house of the accused persons. It is further submitted that there is nothing to show that the accused persons had called the complainant to their house through the phone of his father. There is no CDR on record. Father of the complainant has not been made a witness. There is no record of monetary transaction between the accused and the complainant. It is further submitted that the MLCs of other injured persons are not on record. No weapon of offence has been recovered.

4. Ld. Addl. PP for State has submitted that there are seven accused persons in total. The accused owed money to the complainant and had issued a cheque in his favour. On 18.05.2022, the accused persons called the complainant at his home on the pretext of returning his money. When the complainant reached there, the accused persons were present waiting for him armed with *dandas*. When independent witnesses tried to save the complainant, they were also beaten up. There are four injured persons.

5. Ld. Counsel for the complainant has reiterated his allegations against the accused persons.

6. I have considered the rival contentions.

7. There is a specific allegation against the accused persons that in January 2022, complainant Anoop Gaur had advanced a friendly loan in sum of Rs. 5 lakh in cash to accused Ajit @ Yogesh Gupta for two months. Despite repeated requests from the month of March 2022 onwards, the accused did not return the amount. When the complainant started visiting him at his home, this accused issued a cheque dated 18.05.2022 in sum of Rs. 5 lakh and asked the complainant to deposit the same day. On 18.05.2022, complainant talked to accused Ajit @ Yogesh Gupta and discussed depositing of the said cheque in the bank account upon which the accused got angry and told him that he would arrange the money by 7:00 PM to 8:00 PM on same day. At 10:00 PM, accused came to the house of the complainant and asked his father to call the complainant on the pretext of returning his money. The complainant went to the house of the accused where he found the accused persons already present there with *dandas*, iron rods, one pistol etc. The accused persons hurled casteist slurs (such as *maile kuchle kapde dhone wale jaat ke dhobi*) and humiliated the complainant. Casteist slurs were also hurled at *Chacha* (paternal uncle) of complainant, namely, Karan Pal and he was also beaten up by the accused persons. When Suraj and Vicky came to help him, the accused persons also beat them up. Other persons of locality including Raj Bahadur Maurya and Saurav were also present there but the accused persons criminally intimidated them because of

which they all ran away. Complainant called the number 112.

8. The MLCs of injured Yash Gupta, Karan Pal, complainant Anoop Gaur and Vikram Singh have been filed vide supplementary chargesheet. As per these MLCs, injured Yash Gupta and Anoop Gaur received simple blunt injuries. No opinion has been mentioned on the MLCs of injured Karan Pal and Vikram Singh.

9. In his statement u/s 161 Cr.P.C., the witness Karan Pal has stated that when he, one Vikram Singh and one Yash Gupta tried to save the complainant, accused persons beat them also. Witnesses Vikram Singh and Yash Gupta have made similar statements u/s 161 Cr.P.C.

10. MLC of injured Yash Gupta mentions *abrasion on post aspect of R leg and nasal bleed*. MLC of injured Karan Pal mentions *abrasion on scalp parietal region, abrasion on L foot/leg and CLW on R foot (1.5 X 0.1 cm)*. MLC of injured Anoop Gaur mentions *CLW on R cheek (2 X 0.2 X 0.2 cm) and swelling on scalp behind ear*. MLC of injured Vikram Singh mentions *CLW on L elbow (2 X 0.2 X 0.1 cm), abrasion on L side of forehead and CLW on scalp parietal region (2 X 0.1 X 0.2 cm)*.

11. There is nothing on record to corroborate the allegation of the complainant regarding robbing of Rs. 10,000/- from his pocket by accused Amit and of his gold chain by accused Ajit @

Yogesh Gupta.

12. The witnesses Karan Pal, Vikram Singh, Yash Gupta, Saurav have supported the allegation of the complainant regarding hurling of casteist slurs at the complainant by the accused persons bringing the present case within the ambit of section 3(1)(r)(s) of the SC & ST Act. Since the offences punishable u/s 323/506 IPC are scheduled offences, it calls for framing of charge for the offence punishable u/s 3(2)(va) of the SC & ST Act.

13. There is specific allegation that the accused persons who were seven in number called the complainant on the pretext of returning his money. When the complainant reached near their house, they were already waiting for him armed with *dandas* etc. All the accused persons then beat the complainant up as also those who tried to save him. The accused persons thus constituted an unlawful assembly within the meaning of section 141 IPC.

14. All the contentions of Ld. Counsel for the accused persons are a matter of trial. At this stage, only a *prima facie* case giving rise to grave suspicion is to be seen.

15. 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.”

16. 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 the accused persons: offences punishable u/s (i) 323 IPC r/w 149 IPC; (ii) 506 IPC r/w 149 IPC; (iii) 3(1)(r)(s) of the SC & ST Act, 1989 & (iv) 3(2)(va) of the SC & ST Act, 1989.*

PRONOUNCED IN OPEN COURT ON THIS 31st DAY OF MARCH 2023.

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