

**न्यायालय: अपर सत्र न्यायाधीश, न्यायालय कक्ष सं० 07, मथुरा।**

सत्र परीक्षण सं० 323/2018

राज्य

बनाम

सुरेश आदि

मुकदमा अपराध सं० 31/2018

धारा -147,148,149,323,452

307, 504 भा०दं०सं०

थाना वृन्दावन, जिला मथुरा ।

**आरोप**

मैं विवेकानन्द शरण त्रिपाठी, अपर सत्र न्यायाधीश, न्यायालय कक्ष सं० 07, मथुरा आप अभियुक्तगण सुरेश, महेश व भारती को निम्न प्रकार आरोपित करता हूँ-

**प्रथम:-** यह कि दिनांक 12.01.2018 को समय करीब शाम 5.30 बजे, स्थान हनुमानगढ़ी थानाक्षेत्र वृन्दावन, जिला मथुरा में जब मुकदमा का भाई हरिओम घर पर कार्य कर रहा था, उसी समय आप अभियुक्तगण द्वारा हमला करने के उद्देश्य से विधि विरुद्ध जमाव कर बल्वा किया गया। इस प्रकार आप लोगों ने ऐसा अपराध कारित किया जो धारा 147 भा०दं०सं० के अन्तर्गत दंडनीय अपराध है तथा इस न्यायालय के प्रसंज्ञान में है ।

**द्वितीय:-** यह है कि उपरोक्त दिनांक, समय व स्थान पर आप अभियुक्तगणों ने मुकदमा वादी के भाई को मारपीट करने के लिए खतरनाक आयुधों लाठी, डण्डों व तमंचे से सुसज्जित होकर विधि विरुद्ध जमाव कर बल्वा किया। इस प्रकार आप लोगों ने ऐसा अपराध कारित किया जो धारा 148 भा०दं०सं० के अन्तर्गत दंडनीय अपराध है तथा इस न्यायालय के प्रसंज्ञान में है।

**तृतीय:-** यह है कि उपरोक्त दिनांक, समय व स्थान पर आप अभियुक्तगणों ने मुकदमा वादी के भाई के साथ मारपीट की गयी। इस प्रकार आप लोगों ने ऐसा अपराध कारित किया जो धारा 323 भा०दं०सं० के अन्तर्गत दंडनीय अपराध है तथा इस न्यायालय के प्रसंज्ञान में है ।

**चतुर्थ-** यह कि उपरोक्त दिनांक, समय व स्थान पर आप अभियुक्तगणों ने मुकदमा वादी के घर में घुसकर हमला कारित कर ग्रहअतिचार किया गया। इस प्रकार आप लोगों ने ऐसा अपराध कारित किया जो धारा 452 भा.द.स. के अन्तर्गत दंडनीय अपराध है तथा इस न्यायालय के प्रसंज्ञान में है ।

**पंचम-** यह कि उपरोक्त दिनांक, समय व स्थान पर आप अभियुक्तगण द्वारा मुकदमा वादी के घर में घुसकर उसके भाईयों के साथ मारपीट की गयी तथा मुकदमा वादी के भाईयों को जान से मारने की नीयत से इस तथ्य, ज्ञान एवं परिस्थितियों में तमंचे से फायर किया कि यदि उससे किसी की मृत्यु हो जाती तो आप अभियुक्तगण हत्या के अपराध के दोषी होते। उक्त तमंचे से फायर करने पर मुकदमा वादी के भाई हरिओम को गोली भी लग गयी जिससे उसकी हालत गंभीर है। इस प्रकार आप लोगों ने ऐसा अपराध कारित किया जो धारा 307/149 भा०दं०सं० के अंतर्गत दंडनीय अपराध है तथा इस न्यायालय के प्रसंज्ञान में है।

**षष्ठम-** यह कि उपरोक्त दिनांक, समय व स्थान पर आप अभियुक्तगण द्वारा मुकदमा वादी के भाईयों साथ गाली गलौज कर साशय अपमानित करते हुए लोक शांति भंग की गयी। इस प्रकार आप लोगों ने ऐसा अपराध कारित किया जो धारा 504 भा०दं०सं० के अंतर्गत दंडनीय अपराध है तथा इस न्यायालय के प्रसंज्ञान में है।

एतद्वारा आपको निर्देशित किया जाता है कि उपरोक्त आरोप में आपका परीक्षण इस न्यायालय द्वारा किया जायेगा।

दि० 14-06-2018

(विवेकानन्द शरण त्रिपाठी )  
अपर सत्र न्यायाधीश  
न्यायालय कक्ष सं० 07,मथुरा ।

अभियुक्तगण को आरोप पढ़कर सुनाया व समझाया गया। अभियुक्तगण ने आरोप से इन्कार किया एवं परीक्षण चाहा ।

दि० 14-06-2018

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14.06.2018

पत्रावली प्रस्तुत हुई। अभियुक्तगण सुरेश, महेश व भारती जमानत पर रहते हुए मय विद्वान अधिवक्ता न्यायालय उपस्थित आये। विद्वान सहायक जिला शासकीय अधिवक्ता दाण्डिक भी उपस्थित हैं। आज यह पत्रावली अभियुक्तगण के विरुद्ध आरोप विरचित किये जाने हेतु नियत है।

अभियुक्तगण के विरुद्ध आरोप विरचित किये जाने के बिन्दु पर दोनों पक्षों को सुना गया एवं पत्रावली पर उपलब्ध समस्त दस्तावेजीय साक्ष्य का परिशीलन किया। इस सम्बन्ध में आरोप विरचित किये जाने के बिन्दु पर माननीय सर्वोच्च न्यायालय के विभिन्न विधिक दृष्टान्तों का उल्लेख निम्नवत किया जा रहा है-

Section 227 of the Code of Criminal Procedure provides that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. For the purpose of determining whether there is a sufficient ground for proceeding against the accused, the Court possesses a comparatively wider discretion in exercise of which it can determine the question whether the material on record, if unrebutted, in such on the basis of which a conviction can be said reasonably to be possible. At this stage only prima facie case is to be seen, whether case is beyond reasonable doubt is not to be seen. At this stage of framing charge, probative value of materials on record cannot be gone into. At the time of framing of the charge, it is not necessary for the prosecution to establish beyond all reasonable doubts that the accusation which they are bringing against the accused person is bound to be brought home against him. In **Rajveer Singh vs. State of U.P. AIR 2006 SC 1963**, it has been held that at the stage of framing charge the Court has to see if there is sufficient ground for presuming that the accused has committed an offence. If the answer is in affirmative, the order of discharge cannot be passed and the accused has to face the trial. In **Yogesh Joshi vs. State of Maharashtra AIR 2008 SC 2991**, Hon'ble the Apex Court, interpreting the words "not sufficient ground for proceeding against the accused" has held that it postulates exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. Hon'ble Apex Court in **Om Prakash Sharma vs. C.B.I. AIR 2000 SC 2335**, has held that at the stage of 227 of the Code of Criminal Procedure, it is not open to the Sessions Judge to weigh the pros and cons whether improbability and than proceed to discharge the accused holding the said statements existing in the case diary as unreliable. Hon'ble Apex Court in **Niranjan Singh Karan Singh Panjabi vs. Jitendra Bhimraj Bizza AIR 1990 SC 1962** has held that the Court may for limited purpose sift the evidence as it cannot be expected even it 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. In **Kanti Bhadra Shah vs. State of Bengal AIR 2000 SC 522**, Hon'ble Supreme Court has held that the discharge order must contain reasons but an order of framing charge cannot be quashed merely because it does not contain reasons. In **State of J & K vs. Sudarshan Chakkar AIR 1995 SC 1954** and in **Rukmani Narvekar vs. Vijaya Satardekar, AIR 2009 SC 1013**, it has been held that no weight is to be attached to the probable defence of the accused and at the time of framing of the charge, the Court has to confine its attention to documents referred to under Section 173 Cr.P.C. only. At the stage of framing of charge, the court concerned is not required to go into the details of the prosecution evidence from the point of view whether conviction is sustainable on the basis of the available evidence or not. At this stage, court has to be satisfied only on the point whether there exist sufficient ground for proceedings against the accused or not. This legal aspect has been considered by the Hon'ble Apex Court in the case of **State of M.P. Vs. Mohan Lal Soni reported in [(2000) 6 SCC 338]** in which the Apex Court in paragraph no. 7 has held as under :- "7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused." In the case of **Dilawar Balu Kurane Vs. State of Maharashtra reported in [(2002) 2 SCC 135]** wherein Hon'ble Apex Court in paragraph 12 has held as under :- "12. .... In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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 proceedings with the trial; by an large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, an in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a pot 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial." Hon'ble the Apex Court again in the case of **Central Bureau of Investigation Vs. Mukesh Pravinchandra Shroff and others reported in [(2009) 16 SCC 429]** considered the legal position on this point. In

that case Special Court virtually passed an order of acquittal in the garb of an order of discharge. It was held by the Apex Court that it is well settled that the the stage of framing of the charge, what is required to be seen is as to whether there are sufficient grounds to proceed against the accused and the approach of the Special Court was held to be incorrect by the Apex Court. Hon'ble the Apex Court in the case of **Sajjan Kumar Vs. Central Bureau of Investigation reported in [(2010) 9 SCC 368]** again considered this aspect and has held in paragraph no. 19 as under:- "19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution purposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial." In a recent judgment, Hon'ble the Apex Court has again considered this aspect in the case of **Amit Kapoor Vs. Ramesh Chander and another [(2012) 9 SCC 460]** reported in and has discussed in paragraph no. 17, the legal position on this point, as under:- "17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a *quid pro quo* for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code." Again in the case of **Central Bureau of Investigation, CBI Vs. K. Narayana Rao reported in [(2012) 9 SCC 512]** Hon'ble the Apex Court in paragraph no. 15 has held as under:- "15. From the above decisions, it is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the court to say that there is no sufficient ground for proceeding against the accused. A Judicial Magistrate enquiring into a case under Section 209 of the Code is not to act as a mere post offence and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under Section 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analysing the role of the respondent herein (A-6) from the charge-sheet and the materials supplied alongwith it, the above principles have to be kept in mind." In a very recent judgment in the case of **Sherish Hardenia audors Vs. State of M.P. and another reported in JT 2014 (1) SC 286**, Hon'ble Apex Court has held in para 3 as under: "Whether it is quashing of an FIR or a charge-sheet, or summoning of a party under Section 319 Cr.P.C., this Court has repeatedly opined that approach of the Judge must be to consider whether the collected material and evidence is indicative of existence of merely a prima facie case." Aforesaid pronouncements makes it abundantly clear that at the stage of framing charge court is supposed to apply its mind, on the basis of material available on record, whether there exist sufficient ground for proceeding the accused or not. If the Court finds sufficient grounds for proceeding that it would be justified to proceed to frame charge. Such a decision has to be arrived at on the basis of material available on record. At this stage the defence of the accused has not to be considered. The ground that accused has been falsely implicated due to enmity or malafide are alien to be considered at this stage. Such ground can be considered only at the relevant stage of the trial.

पत्रावली पर उपलब्ध समस्त दस्तावेजीय साक्ष्य से अभियुक्तगण सुरेश, महेश व भारती के विरुद्ध भा०द०सं० की धारा 147,148,149,323,452,307,504 का आरोप विरचित किये जाने हेतु प्रथम दृष्टया पर्याप्त आधार है। तदनुसार अभियुक्तगण के विरुद्ध भा०द०सं० की धारा 147,148,149,323,452,307,504 का आरोप विरचित किया गया। पत्रावली वास्ते साक्ष्य अभियोजन दिनांक 04.07.2018 को प्रस्तुत हो। अभियोजन आवश्यक प्रोसेस प्राप्त करे।

(विवेकानन्द शरण त्रिपाठी)  
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