




HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Revision Petition No. 793/2005

1. Rajesh S/o Kalyan Prasad
 2. Kalla @ Ramgilas S/o Kalyan Prasad
 3. Chatru @ Chaturbhuj S/o Kalyan Prasad
 4. Pappu @ Chandra Prakash S/o Sharvan
- All residents of Bil Khan, Sapotra, District Karauli.

----Accused-Petitioners

Versus

The State of Rajasthan

----Respondent

Connected With

S.B. Criminal Revision Petition No. 926/2005

State of Rajasthan through Public Prosecutor, Rajasthan High Court, Jaipur

----Petitioner

Versus

1. Shiv Singh S/o Harsingh Gurjar,
Resident of Tuleka Nangla, Police Station Roopbas, District Bharatpur.
2. Sonde @ Soran Singh S/o Hari Chand Mallah, Resident of Devdaspura, Police Station Rajakhera, District Dholpur.
3. Kalaiya @ Ramkhilari S/o Chandrabhan Mallah, aged 29 years,
Resident of Devdaspura, Police Station Rajakhera, District Dholpur.

----Accused/Respondents

For Petitioner(s) : Mr. V.R. Bajwa, Sr. Advocate assisted by Mr. Amar Kumar and Ms. Savita Nathawat
 Mr. Rajneesh Gupta
 Mr. Fateh Chand Meena
 Mr. Prahlad Sharma
 Mr. Susheel Pujari
 Mr. Atul Sharma-PP in Revision No. 926/2005

} in Revision
 Petition No.
 793/2005.



For Respondent(s) : Mr. Brij Mohan Sharma
Mr. Atul Sharma-PP

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

Reserved on 22/05/2024

Pronounced on 31/05/2024

Reportable

For convenience of exposition, this order is divided in the following parts: -

INDEX

(1) Factual Matrix	3
(2) Submissions on behalf of the Petitioners.....	4
(3) Submissions on behalf of the Public Prosecutor.....	8
(4) Submissions on behalf of the Accused/Respondents in Criminal Revision Petition No. 926/2005.....	9
(5) Analysis, Discussions and Reasonings.....	10
(A) Position of verdicts of Apex Court on the point of Sections 227 and 228 Cr.P.C.....	16
(B) Role of Public Prosecutor and Provisions of Sections 225 and 226 Cr.P.C.....	25
(6) Conclusion.....	30
(7) Directions.....	31

1. Both these petitions are arising out of the impugned order dated 30.07.2005 passed by the District and Sessions Judge, Karauli in Sessions Case No. 36/2002 by which charges have been framed against the petitioners-Rajesh, Kalla @ Ramgilas, Chatru @ Chaturbhuj and Pappu @ Chandra Prakash for the offence under Sections 148, 458, 323, 324, 326, 396 and 397 IPC and under Section 11 of the Rajasthan Dacoity Affected Areas Act. At the



same time, by the same impugned order, the accused persons namely Shiv Singh, Sodhe @ Soren Singh and Ramkhiladi @ Kakaiya have been discharged from the offence(s) with which they were chargesheeted.

2. Aggrieved by the impugned order dated 30.07.2005, Rajesh, Kalla @ Ramgilas, Chatru @ Chaturbhuj and Pappu @ Chandra Prakash have approached this Court by way of filing S.B. Criminal Revision Petition No.793/2005 and aggrieved by the same order, the State has preferred S.B. Criminal Revision Petition No. 926/2005. Since both these petitions are arising out of the same order, hence after hearing the arguments of both the sides, both the petitions are being decided by this common order.

Factual Matrix:-

3. Facts, in brief, of the case are that the complainant-Brij Mohan lodged a report with Police Station Sapotra, District Karauli on 13.01.2002 stating therein that at about 2:30 A.M. while he was sleeping in the corridor of his house and his wife and daughter were sleeping inside a room and his son and his wife were sleeping in the another room, 5-6 persons entered his house and assaulted him. One of the accused persons tried to inflict knife injury on his person which he resisted by his hand, while the other assailants attacked him with lathis. Hearing his hue and cry, when his wife and son came out of their rooms, the assailants attacked them as well with knife and lathis and inflicted injury on them, due to which their condition became serious. The ornaments worn by his wife Vijay Laxmi and daughter Rekha were taken by the assailants and they also took the cash and ornaments from the box lying in the room. The assailants were wearing pants and



shirts and were aged between 25-35 years and he did not know the assailants, but he can identify them, after looking at them. It was also stated in the report that the neighbours -Govind Singhal and Roopchand also came there upon hearing the commotion at his house.

Upon this report, the crime No. 7/2002 was registered at Police Station Sapotra, District Karauli for the offence(s) under Sections 396 and 397 IPC and during the course of investigation, charge-sheet was submitted against the petitioners namely Rajesh, Kalla @ Ramgilas, Chatru @ Chaturbhuj and Pappu @ Chandra Prakash and thereafter, first supplementary chargesheet was submitted against the petitioner-Shiv Singh and second supplementary chargesheet was submitted against Sodhe @ Soren Singh, Kakaiya @ Ramkhiladi. All three charge-sheets were consolidated and thereafter the order impugned has been passed by which the charges have been framed against the above accused persons namely Rajesh, Kalla @ Ramgilas, Chatru @ Chaturbhuj and Pappu @ Chandra Prakash and other co-accused persons namely Shiv Singh, Sonde @ Soren Singh and Ramkhiladi @ Kakaiya have been discharged from all the charges.

Submissions on behalf of the Petitioners:-

4. Learned counsel for the petitioners submits that in the FIR, the complainant has not named any of them as assailants and the FIR was registered against unknown persons. Counsel submits that immediately after lodging of the FIR, statement of the complainant was recorded on the very same day i.e. on 13.01.2002, wherein also he has not named any of the accused. Counsel submits that after the aforesaid incident, statements of



witnesses Seema and Rekha were recorded on 14.01.2002, wherein names of three accused persons namely Rajesh, Kalla @ Ramgilas, Chatru @ Chaturbhuj were mentioned and name of the accused person Pappu was still not there. Counsel submits that after a lapse of more than four days, supplementary statement of the complainant Brijmohan was recorded, wherein for the first time he introduced the name of five accused persons namely Kalla, Rajesh, Chaturbuj, Pappu Meena and Hansraj Meena. Counsel submits that in his statement, complainant has specifically admitted and mentioned that there was a civil dispute between his family and the accused persons. Counsel submits that the above four accused namely Rajesh, Kalla @ Ramgilas, Chatru @ Chaturbhuj and Pappu @ Chandra Prakash were kept in illegal detention by the police w.e.f. 13.01.2002 to 24.01.2002, without making their arrest, hence under these circumstances, an application under Section 97 Cr.P.C. was submitted by the family members of the accused for issuance of warrant for their search. Counsel submits that under these circumstances, formal arrest of above four accused persons was shown on 24.01.2002. Counsel submits that without there being any evidence, available against the petitioners, they were chargesheeted for the above mentioned offences. Counsel submits that in the meantime, a fax message was received on 30.05.2002 by the Director General of Police and Additional Director General of Police from the Superintendent of Police, Bharatpur wherein it was mentioned that a gang of dacoits was arrested wherein one of the accused Shiv Singh was arrested and during his interrogation, he admitted about the dacoity being committed by his gang at the house of the complainant-Brijmohan





on 13.01.2002 wherein the wife of the complainant i.e. Vijay Laxmi was murdered and an FIR in this regard i.e. FIR No. 7/2002 was registered under Sections 396, 397 IPC. Counsel submits that on the basis of the aforesaid fax message, further investigation was conducted by the police and thereafter, first supplementary chargesheet was submitted against the accused-Shiv Singh and under Section 173(8) Cr.P.C. the investigation was kept pending against rest of the accused persons. Counsel submits that in the meantime, Additional Director General of Police sent a letter to the Superintendent of Police, Karauli and recommended for filing an application under Section 169 Cr.P.C. in favour of the petitioners for their release. Counsel submits that on the basis of the aforesaid recommendation of Additional DGP, an application under Section 169 Cr.P.C. was submitted in favour of the petitioners, however, the same was rejected by the learned Additional Judicial Magistrate, Karauli vide order dated 12.11.2002 without entering into merits of the case but on technical ground that after submission of chargesheet, the case was committed to the Court of Sessions, hence under these circumstances, the Court of Judicial Magistrate has become "*functus officio*". Counsel submits that subsequently, an application under Section 321 Cr.P.C. was submitted by the State for withdrawing the prosecution case against the petitioners, however, the said application was rejected by the learned Sessions Judge vide impugned order dated 16.12.2002 on a technical ground that no reasons were assigned by the public Prosecutor in the application submitted under Section 321 Cr.P.C. Counsel submits that the aforesaid order dated 16.12.2002 was assailed by the petitioners before this Court by





way of filing S.B. Criminal Revision Petition No. 77/2003, however the said petition was dismissed by this Court vide order dated 09.06.2003. Counsel submits that against the aforesaid order of this Court, the petitioners submitted a Special Leave to Appeal (Criminal) CRLMP No. 994/2003 before the Hon'ble Apex Court however, the same was also rejected on 21.11.2003. Counsel submits that in the meantime, 2nd chargesheet was submitted against the co-accused Sonde @ Soren, Kakaiya @ Ramkhiladi and other accused persons who expired and the investigation was kept pending against the co-accused Mutaiya @ Matadeen and Pappu and the investigation against the original accused Hansraj Meena was closed. Counsel submits that once the prosecution was sure that the petitioners were not involved in the above incident and that is why applications under Section 169 Cr.P.C. and Section 321 Cr.P.C. were submitted for their release and for withdrawal of their prosecution respectively, then under these circumstances, petitioners cannot be prosecuted and no charge can be framed against them. Counsel further submits that on subsequent occasions, the prosecution came with a different theory that the petitioners were not involved in the above alleged incident but other co-accused persons were involved in the incident that is why first and second supplementary chargesheets were submitted against them and the investigation is still pending against rest of the accused persons under Section 173(8) Cr.P.C. Counsel further submits that as per Section 225 Cr.P.C., the prosecution in trial before the Court of Sessions shall be conducted by the Public Prosecutor but here in the instant case, Public Prosecutor is not inclined to conduct the prosecution against the petitioners and is





not ready to open the case against the petitioners then under these circumstances, there was no reason or occasion available with the trial Court to frame charges against the petitioners, hence under these circumstances, interference of this Court is warranted. In support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Luckose Zachariah @ Zak Vs. Joseph Joseph and Ors.**, reported in **2022 Live Law (SC) 230**.

Submissions on behalf of the Public Prosecutor:-

5. Per contra, learned Public Prosecutor opposed the arguments raised by counsel for the petitioners and submitted that trial Court has rightly framed the charges against the petitioners by passing the order dated 30.07.2005 and he further submitted that the learned Sessions Judge has committed an error in discharging the accused Shiv Singh, Sonde @ Soren Singh and Ramkhiladi @ Kakaiya. Counsel submits that there was sufficient evidence available to proceed against them. Counsel submits that the accused Shiv Singh was identified by the witness Pyarelal when the test identification parade was conducted and one lathi was recovered at his instance. Counsel submits that even the weapon used in the offence i.e. Knife and country-made gun has been recovered at the instance of Sonde @ Soren Singh and Ramkhiladi @ Kakaiya respectively. Counsel submits that prima facie evidence was available against the three accused persons and that is why separate supplementary chargesheets were submitted against them. Counsel submits that while discharging these three accused persons, the learned Sessions Judge has meticulously examined the evidence of the witnesses, while at the stage of framing of the





charges, only prima facie case is required to be seen. Counsel submits that at the stage of framing of charge, the Court is not required to analyse the evidence of the prosecution in a meticulous manner and only a prime facie case is required to be seen. Counsel submits that at this stage, there was ample evidence against the accused persons for framing charges against them. Counsel submits that charges have rightly been framed against the petitioner Nos. 1 to 4 but the order qua Shiv Singh, Sonde @ Soren Singh and Ramkhiladi @ Kakaiya, by which they have been discharged, is illegal and not sustainable in the eye of law and the same is liable to be quashed and set aside.

Submissions on behalf of the Accused/Respondents in Criminal Revision Petition No. 926/2005:-

6. Per contra, counsel appearing on behalf of the accused respondents in Criminal Revision No. 926/2005, opposed the arguments raised by learned Public Prosecutor and submitted that the accused persons are not named in the FIR as well as in the statements of the injured and the other eye witnesses. Counsel submits that there was no evidence available against these accused persons as to why they were charge-sheeted and accused respondents have falsely been booked in this case by the Investigating Agency by way of filing first and second supplementary chargesheets. Counsel submits that merely on the basis of recovery of weapon of knife, they cannot be connected with the alleged offences which were committed upon the complainant and his family members. Counsel submits that none of these witnesses have named the accused respondents as assailants, hence, under these circumstances, the learned trial



Judge has not committed any error in discharging them and therefore, hence under these circumstances, interference of this Court is not warranted.

Analysis, Discussions and Reasonings:-

7. Heard and considered the submissions made at Bar and perused the material available on record.

8. Perusal of the record indicates that the complainant Brij Mohan lodged an FIR No.7/2003 at the Police Station Sapotara, District Karauli on 13.01.2002 alleging therein that on 13.01.2002 he was sleeping in the corridor of his house. His wife and daughter Rekha were sleeping in a room and his son Ram and his wife were also sleeping in the adjacent room and at around 2-2:30 A.M., 5-6 persons entered the house and assaulted him with knife and lathis. Hearing his hue and cry, his wife and son came out, and the assailants also attacked them with knife and lathis and caused them injuries because of which their condition became serious. They not only took the ornaments of his wife Vijay Laxmi and daughter Rekha but also took the cash and ornaments from the box lying in the room. The age of the assailants was in between 25-35 years whom he did not know but he can identify them. After arrival of his neighbours Govind Singh and Roop Chand, the assailants ran away. Similar statements under Section 161 Cr.P.C. were given by him to the Police on 13.01.2002.

9. Thereafter, Police statements of Seema and Rekha were recorded on 14.01.2002. Both of them stated that one of the assailants said "Chaturbhuji assault more, this is the real miscreant". In the meantime, voice came from the outside "Kalla and Rajesh come outside, the people have awoken". Then all these



persons ran away. The same statement was given by Madan Gopal S/o Brij Mohan on 15.01.2002.

10. After four days of the incident, the supplementary statement of the complainant Brij Mohan was recorded on 17.01.2002 wherein he stated that due to sustaining injuries, he was not in proper state of mind. He stated that there was light in the room and he saw that Kalla, Rajesh, Chaturbhuj, Hansraj and Pappu were the assailants who caused the incident with them and some persons were near the door who shouted that "Kalla and Rajesh come outside, the people have awoken".

11. Similar statements were given by Ramu S/o Brij Mohan on 20.01.2002.

12. On the basis of the statements of these witnesses, the petitioners were arrested on 24.01.2002.

13. On the basis of the evidence of these witnesses, chargesheet was submitted against the petitioners on 22.04.2002 under Sections 148, 323, 324, 326, 307, 302, 395, 396, 397 and 458 IPC and investigation was kept pending against the co-accused Hansraj under Section 173(8) Cr.P.C.

14. After submission of chargesheet against the petitioners before the competent Court of law, a Fax message was sent on 30.05.2002 by the Superintendent of Police, Bharatpur to the Director General of Police, Jaipur to the effect that a team was constituted to enquire about an inter-State gang who committed various incidents of dacoity and robbery at various places. One accused Shiv Singh @ Hari Singh was arrested on 30.05.2002 and in his interrogation, he told about various incidents committed by him along with other gangmembers including the incident of dacoity



which occurred on 13.01.2002 at the house of Brij Mohan wherein his wife Vijay Laxmi was murdered and for which FIR No.7/2002 was registered at the Police Station Sapotara, District Karauli under Section 396 & 397 IPC.

15. Thereafter, further investigation was done in the instant FIR No.7/2002 by the Police Station Sapotara and the accused Hari Singh @ Shiv Singh was arrested and his Test Identification Parade (TIP) was conducted and he was identified by the witness Pyarelal and a lathi was recovered at his instance. After investigation, first supplementary chargesheet was submitted against him along with other accused Siya Ram (now deceased), who committed suicide in Police custody by hanging. While submitting chargesheet against these two accused persons on 08.10.2002, the investigation was kept pending under Section 173(8) CrPC against the co-accused Hansraj Meena, Kaikaiya @ Ramkhiladi, Mutaiya @ Matadeen, Sonde @ Soren, Ramnath, Pappu, Rajendra @ Khanna, Babu @ Rambabu, Dashrath, Nathi and Veer Singh.

16. During the course of further investigation, the accused Sonde @ Soren and Kaikaiya @ Ramkhiladi were arrested on 25.04.2004 and 20.07.2004 respectively and the accused Babu @ Rambabu and Rajendra @ Khanna died, hence, second supplementary chargesheet was submitted against the accused respondents Sonde @ Soren and Kaikaiya @ Ramkhiladi under Section 396, 397, 307 and 302 IPC and still the investigation was kept pending against rest of the above accused persons. But now the co-accused Hansraj Meena has been excluded from investigation and no investigation is pending against him.





17. In the meantime, the Additional Director General of Police, Jaipur recommended the Superintendent of Police, Karauli to submit an application under Section 169 CrPC for release of the petitioners by treating the evidence against them as deficient. On the basis of the above recommendation, the Superintendent of Police, Karauli submitted an application under Section 169 CrPC through Public Prosecutor before the Court of Additional Judicial Magistrate, Karauli and the same was opposed by the complainant. The learned Magistrate rejected the same vide order dated 12.11.2002 observing therein that after submission of chargesheet against the petitioners, the case was committed to the Court of Sessions for trial and the Court of Judicial Magistrate has become "*functus officio*". It was also observed in the order that after submission of chargesheet against the accused, the role of the Investigating Agency is over and no such application can be filed by the Police under Section 169 CrPC for release of the accused petitioners. The provisions of Section 169 CrPC are attracted before submission of chargehseet.

It is worthy to note here that the order dated 12.11.2002 was neither challenged by the Department of Prosecution i.e. the State nor by the petitioners before any higher Court of law.

18. After rejection of the prosecution's application under Section 169 CrPC, the prosecution submitted another application under Section 321 CrPC before the Court of Sessions Judge, Karauli for withdrawal of prosecution against the four petitioners. The aforesaid application was rejected by the trial Judge vide order dated 16.12.2002. Upon finding a prima facie case against the petitioners, the trial Judge was of the view that withdrawal of the





prosecution case was not in public interest and by passing a reasoned and speaking order, assigning multiple reasons, the application was rejected vide order dated 16.12.2002.

19. Aggrieved by the aforesaid order dated 16.12.2002, the petitioners as well as the State i.e. prosecution submitted two different Revision Petitions i.e. S.B. Criminal Revision Petition No.378/2003 and S.B.Criminal Revision Petition No.77/2003 before this Court and both the Revision Petitions were rejected by this Court vide common order dated 09.06.2003 and the same is reproduced as under:-

“Since both the revision petitions are arising out of the same order dated 16.12.2002 passed by the District & Sessions Judge, Karauli, by which an application filed on behalf of the State under Section 321 Cr.P.C. has been dismissed, on the request of counsel for the parties both the revision petitions are heard together and are being decided by this common order.

After hearing learned counsel for the parties, I have carefully gone through the material available on record and also the order impugned in the present revision petitions.

The incident alleged to have taken place in the intervening night of 13.1.2002 and 14.1.2002 around 2.00 PM. The FIR was lodged at 2.50 PM and subsequently, statements under Section 161 Cr.P.C. were also recorded of some of the witnesses including the injured around 7.00 AM on 14.1.2002. Twenty seven injuries were sustained by three injured and two injuries by the deceased lady. After investigation a chargesheet for offence under Sections 395, 396, 397, 148, 302, 323, 324, 326, 307, 458 IPC was filed against the accused-petitioners alongwith some other co-accused. The first bail application of some accused-petitioners was rejected by this court on 19.8.2002. Thereafter the second bail application of same accused petitioners was also rejected on 17.1.2003.

In the meanwhile, relying on the statement of one of the accused, who was apprehended in another criminal case, an application under Section 321 Cr.P.C. was filed by the prosecution before the trial court with a prayer





for withdrawing the prosecution against the four accused petitioners, namely Chatru @ Chaturbhuj, Kalla @ Ramgilas, Rajesh and Pappu @ Chandra Prakash. After considering the entire material on record, the application was rejected by the trial court vide impugned order dated 16.12.2002.

In view of sequence of events narrated above, since all the four accused petitioners have been named in the statements recorded at the very initial stage, prima facie, it cannot be said that the accused-petitioners against whom the prosecution intends to withdraw the prosecution, have falsely been implicated in the present case.

After considering the entire facts and circumstances of the present case, without making any further observations on the merits of the case, I find no error or illegality in the impugned order passed by the trial court so as to call for any further interference of this court in the present matter. Both the revision petitions are dismissed accordingly as having no merits. Record of the trial court be sent back immediately."

20. Feeling aggrieved and dissatisfied by the above order dated 09.06.2003, the petitioners approached the Hon'ble Supreme Court by way of filing Special Leave to Petition (Criminal) CRLMP No. 9941/2003 and the same was dismissed on 21.11.2003. Meaning thereby, the order passed by the trial Court as well as by this Court has attained finality. Once withdrawal of prosecution of the petitioners was denied then the trial Court was expected to proceed against them in accordance with law.

21. Now, vide impugned order dated 30.07.2005, charges have been framed against the petitioners for the offences under Sections 148, 458, 323, 324, 326, 396, 397 IPC and under Section 11 of the Rajasthan Dacoity Affected Area Act and at the same time by the same order, the accused respondents Shiv Singh, Sonde @ Soren Singh and Kaikaiya @ Ramkhiladi have



been discharged from all the offences for which they were chargesheeted.

22. Aggrieved by the aforesaid order, both the accused petitioners as well as the State have approached this Court by way of filing the instant two revision petitions. The petitioners are seeking their discharge from all the charges and the State is seeking an order for quashing the order of discharge of the accused respondents on the basis of the material available on record against them.

23. Now, the question remains for consideration of this Court is 'Whether the accused persons can be discharged on the basis of evidence available against them in all the three chargesheets'?

(A) Position of verdicts of Apex Court on the point of Sections 227 and 228 Cr.P.C:-

24. It is a settled proposition of law that at the time of framing of charges, the truth, veracity and the effect of evidence cannot be meticulously examined. At this stage, the Court is required to evaluate the materials and documents on record to find out if the facts emerging therefrom disclose the presence of all the ingredients constituting the alleged offence.

25. In the case of **Sajjan Kumar Vs. Central Bureau of Investigation reported in (2010) 9 SCC 368**, the Hon'ble Supreme Court in para 21 of the judgment has laid down the principles which are to be kept in mind by the Court, while exercising jurisdiction under Sections 227 & 228 Cr.P.C., which are as below:-



"In the case of Sajjan Kumar v. Central Bureau of Investigation reported in (2010) 9 SCC 368, Hon'ble Supreme Court in para 21 of the judgment has laid down the principles which are to be kept in mind by the Court while exercising jurisdiction under Sections 227 & 228 Cr.P.C., which are as below :

"(i) The Judge while considering the question of framing the charges under Section 227 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 state of Sections 227 & 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 disclose 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 at this stage, he is not to see whether the trial will end in conviction or acquittal."

26. In the case of **Sheoraj Singh Ahlawat & Ors. v. State of Uttar Pradesh & Anr.** reported in **(2013) 11 SCC 476**, the Hon'ble Apex Court has held as below :

"While framing charges, court is required to evaluate materials and documents on record to decide whether facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of materials on record. It needs to evaluate whether there is a ground for presuming that accused had committed offence. But it should not evaluate sufficiency of evidence to convict accused. Even if there is a grave suspicion against the accused and it is not properly explained or court feels that accused might have committed offence, then framing of charges against the accused is justified. It is only for conviction of accused that materials must indicate that accused had committed offence but for framing of charges if materials indicate that accused might have committed offence, then framing of charge is proper. Materials brought on by prosecution must be believed to be true and their probative value cannot be decided at this stage. The accused entitled to urge his contentions only on materials submitted by





prosecution. He is not entitled to produce any material at this stage and the court is not required to consider any such material, if submitted. Whether the prima facie case made out depends upon facts and circumstances of each case. If two views are possible and materials indicate mere suspicion, not being grave suspicion, against accused then he may be discharged. The court has to consider broad probabilities of case, total effect of evidence and documents produced before it. The court should not act as mouthpiece of prosecution and it is impermissible to have roving enquiry at the stage of framing of charge."



27. Again, the Hon'ble Apex Court in the case of **State of Rajasthan Vs. Fatehkaran Mehdu** reported in **AIR 2017 SC 796**, while dealing with the scope of interference under Section 397 Cr.P.C, when the charges had been framed, has held as under :-

"26. The scope of interference and exercise of jurisdiction Under Section 397 of Code of Criminal Procedure has been time and again explained by this Court. Further, the scope of interference Under Section 397 Code of Criminal Procedure at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the Accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the Accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction Under Section 397 Code of Criminal Procedure, which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to



set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. XX XX XX

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction Under Section 397 particularly in context of quashing of charge framed Under Section 228 Code of Criminal Procedure Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:



"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction Under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court Under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would



end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

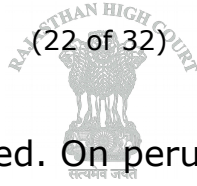
27.13) Quashing of a charge is an exception to the Rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie”.

30. Applying the above tests, we are of the considered opinion that High Court erred in quashing the charges framed by the order dated 05.05.2009. In result, both the appeals are allowed. The order of the High Court is set aside and the order dated 05.05.2009 is restored. The learned Special Judge may proceed with the trial in accordance with the law expeditiously.”

28. In the case of **Bhawna Bai Vs. Ghanshaym** reported in **(2020)2 SCC 217**, the Hon’ble Apex Court has held that at the time of framing of charges, only prima facie case is to be seen and whether the case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing of charges, the Court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required, only prima facie case is required to be seen against the accused.

It has been held that for framing of charge under Section 228 Cr.P.C., the Judge is not required to record detailed reasons as



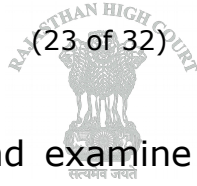


to why such charge is framed. On perusal of record and hearing of the parties, if the Judge is of the opinion that there is sufficient ground for presuming that the accused has committed offence triable by the Court of Session, he shall frame the charge against the accused of such offence.

29. Recently in the case of **State of Gujrat Vs. Dilipsingh Kishorsingh Rao**, Criminal Appeal No. 2504/2023 the Hon'ble Supreme Court has held that primary consideration, at the stage of framing of charge, is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. It has been held in para 12 and 13 of the judgment as under:-

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

13. The power and jurisdiction of Higher Court under Section 397 Cr.P.C. which vests the court with the



power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings. It would be apposite to refer to the judgment of this court in Amit Kapoor Vs. Ramesh Chandra (2012) 9 SCC 460 where scope of Section 397 has been considered and succinctly explained as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.



13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

30. Thus, it is a well settled legal position that at the stage of framing of charge for an offence against an accused, prima facie it has to be seen whether sufficient grounds are available on record to proceed against him and even strong suspicion is enough to frame charge and at this stage of the proceedings, evidence is not required to be analyzed as it is required to be done at the final stage after trial.

31. This Court finds no substance in the arguments raised by the petitioners that initially in the FIR and first police statement of the complainant Brij Mohan, the accused persons were not named but subsequently after 2-4 days, their names were introduced in the police statements of the witnesses Seema, Rekha and in the supplementary statements of the complainant Brij Mohan. The





names of the petitioners have appeared in these statements which prima facie show their involvement in the incident. Whether they were actually involved or not or they were falsely booked, this fact would be appreciated by the trial Court at the appropriate stage when evidence of the prosecution witnesses would be recorded during the course of trial.

32. Whether the petitioners were illegally detained by the Police w.e.f. 13.01.2002 to 23.01.2002 or not, this fact would be adjudicated by the appropriate Court in a separate complaint, filed (if any) by them before the competent Court of law.

(B) Role of Public Prosecutor and Provisions of Sections 225 and 226 Cr.P.C:-

33. The other argument of counsel for the petitioners is that prosecution and the Public Prosecutor is expected to act in accordance with the procedure and provisions, contained under Sections 225 and 226 of the Code of Criminal Procedure.

34. As per Section 225 Cr.P.C. in every trial before a Court of Sessions, the prosecution shall be conducted by the Public Prosecutor. Similarly, as per Section 226 Cr.P.C., when the accused appears or is brought before the Court, in pursuance of a commitment of the case under Section 209 Cr.P.C., the prosecution shall open its case by describing the charge brought against the accused and stating as to what evidence he proposes to prove the guilt of the accused. Thereafter, considering the record of the case, the Court may frame charges against the accused or discharge him.



35. It is true that twice attempt was made by the prosecution to drop proceedings against petitioners; firstly, by way of filing an application under Section 169 Cr.P.C to get the petitioners released and secondly, by filing an application under Section 321 Cr.P.C. to withdraw prosecution against them. But both these attempts of the prosecution remained unsuccessful as both these applications were rejected by the Courts below and the orders passed thereupon have attained finality. Now, under these facts and circumstance of the case, the Public Prosecutor is duty bound to conduct prosecution against the accused persons and the prosecution is under a legal obligation under Sections 225 and 226 Cr.P.C. to open its case by describing the charges brought against the accused persons.

It is worthy to note here that surprisingly, the Public Prosecutor has submitted written arguments in favour of the petitioners and prayed for their discharge and prayed for framing of the charges against the accused Shiv Singh, Sonde @ Soren Singh and Kaikaiya @ Ramkhiladi. Such act of the prosecution is not appropriate and the same is liable to be deprecated. The Public Prosecutor has no authority to request the trial Court to discharge the petitioners Chaturbhuj, Chandra Prakash, Ramgilas and Rajesh once the application of the prosecution filed under Section 321 Cr.P.C. has been rejected not only by the trial Court but also by this Court as well as the Hon'ble Apex Court. Hence, under such circumstances, the Public Prosecutor is duty bound to follow the mandatory provisions, contained under Sections 225 and 226 Cr.P.C. Such conduct of the Public Prosecutor and the



Department of Prosecution is totally unwarranted and the same is liable to be deprecated.

36. The Public Prosecutor is considered to be an officer of the Court and he is expected to assist the Court in finding the truth in a given case. The prosecutor no doubt, has to vigorously and consciously prosecute the case so as to serve the high public interest of finding out the truth and in ensuring adequate punishment to the offender. He has to safeguard public interest in prosecuting the case, public interest also demands that trial should be conducted in a fair manner.

37. The Public Prosecutor is a functionary of the State appointed to assist the Court in conducting the trial, object of which is basically, to find the truth and to punish the accused if he is found guilty according to the known norms of the law and procedure. His plain task is to represent the State's point of view on the basis of the material which could be legitimately brought before the court at the trial. Even if all State actions are just, fair and reasonable, he would still be under duty as a functionary of the State to discharge his functions as Public Prosecutor in a just, fair and reasonable manner irrespective of the outcome of the trial. In that sense he is part of the judicial system and an upright Public Prosecutor has no friends and foes in Court. He has no prejudices, preconceived notions, bias, hostility or his own axe to grind. He represents public interest but is not a partisan in the narrow sense of the term. He is expected to act in a "scrupulously fair manner" and present the case of the prosecution before the Court of law. He must present a complete picture and not one sided picture.



The office of Public Prosecutor carries very great importance in the scheme of criminal trials in Sessions Court. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the Court but also to the investigating agencies.

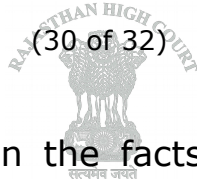
38. In the instant case, thrice the investigation was done by the Investigating Agency and three different chargesheets were submitted against the seven accused persons including four petitioners and three accused respondents, after finding their prima facie involvement in the incident occurred on 13.01.2002. The role of the Investigating Agency is over the moment chargesheet is submitted against the accused persons. The Investigating Agency has no right, authority or jurisdiction to say, after submission of chargesheet, that some of the accused persons be released or not prosecuted. Such an act is not within their domain and the Investigating Agency has to stick on its stand, when after investigation, chargesheet has been submitted by it against the accused persons.

39. Though, it is the discretion of the State to prosecute any accused or not but there must be substantial reasons for seeking withdrawal of prosecution of any accused. Here, in this case, such prayer of the State has been declined not only by the trial Court but also by this Court and even by the Hon'ble Supreme Court vide order dated 21.11.2003. Hence, under these circumstances, the Public Prosecutor is supposed to act in accordance with law, as per the provisions, contained under Sections 225 and 226 Cr.P.C.



40. It is worthwhile to mention here that against the order of framing of charges against the petitioners, the State or the Public Prosecutor has not filed any petition before this Court stating that charges have been wrongly framed against them and they should be discharged. Meaning thereby that the State is satisfied by the order of framing of charges against the petitioners.

41. This Court finds no force in the arguments of the counsel for the petitioners that if both sets of accused are tried together against whom three different chargesheets have been submitted, then such act of the Court would amount to mis-joinder of charge. The theory and principle of "mis-joinder of charge" is not applicable here in this case at the stage of framing of charges. Which set of the accused, committed the incident of dacoity with murder on the fateful day would be seen at the appropriate stage of trial i.e. at final stage after appreciating the evidence led by both the prosecution as well as the defence. At that stage, the trial Court would be required to separate the chaff from the grain to find out the true genesis of the incident. Though it would be a Herculean task but that is the duty of the trial Court to separate the grain from the chaff at the final stage of conclusion of trial and appreciate the evidence after its meticulous examination at the final stage of the trial. At this stage of framing of charge only prima facie case is required to be seen and in the present case prima facie evidence is there to proceed against the petitioners, hence no case is made out for their discharge. The judgment relied by the petitioners in the case of **Luckose Zachariah**



(Supra) is not applicable in the facts and circumstances of the present case.

42. Now, this Court proceeds to decide the issue of discharge of the accused Shiv Singh, Sonde @ Soren Singh and Kaikaiya @ Ramkhiladi. The trial Court has unnecessarily meticulously examined the evidence in their favour as if the learned trial Judge was holding final trial against them. Prima facie evidence was there to proceed against them. Weapon of offences were recovered at the instance of all these accused persons and even the accused Shiv Singh was identified by one witness Pyarelal in the Test Identification Parade. Hence, prima facie case was there to proceed against all the accused persons on the basis of chargesheet submitted against them. Hence, the learned trial Judge has committed an error in discharging them vide impugned order dated 30.07.2005 in as much as no plausible ground existed before him to discharge the accused respondents.

43. The learned trial Court has over-exercised its power beyond its jurisdiction in discharging the accused Shiv Singh, Sonde @ Soren Singh and Kaikaiya @ Ramkhiladi. Hence, the impugned order dated 30.07.2005 by which the accused respondents were discharged is not sustainable in the eye of law and the same is liable to be quashed and set aside with direction to the trial Court to proceed against them in accordance with law.

Conclusion:-

44. In view of the discussions made hereinabove, S.B.Criminal Revision Petition No.793/2005 submitted by the accused petitioners stands rejected and S.B.Criminal Revision Petition

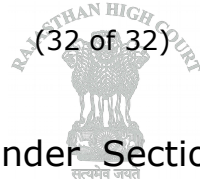


No.926/2005 submitted by the State against discharge of the accused respondents stands allowed. The trial Court is directed to pass a fresh order qua the discharged accused in accordance with law, after affording them due opportunity.

Directions:-

45. Before parting with this order, it is made clear that whatever has been observed by this Court while deciding the instant revision petitions, is confined to adjudication of the instant revision petitions on the point of framing of charge alone. The trial Court is directed to conduct the trial strictly in accordance with law, after appreciating the evidence of both the sides, without being influenced by any of the observations made by this Court. Looking to long pendency of the matter before the trial Court, since 2002, it is expected from the trial Court to expedite the proceedings of the trial, as per the mandate, contained under Section 309 Cr.P.C. without entertaining any unnecessary requests of adjournment made by either sides.

46. This Court feels pain to observe and see the conduct of the Investigating Agency, as even for an incident which occurred in the year 2002, the investigation is still kept pending against some of the co-accused persons under Section 173(8) Cr.P.C. It is not expected from the Investigating Agency to keep any investigation pending for more than two decades. Already more than 22 years have been passed and still the investigation is pending under Section 173(8) Cr.P.C. The Director General of Police, Rajasthan, Jaipur is directed to look into the matter and pass appropriate orders for completion of the investigation and submit the result of



investigation and report under Section 173 Cr.P.C. without any further delay.

47. Let a copy of this order be sent to the Director General of Police, Rajasthan, Jaipur for necessary action and compliance.



(ANOOP KUMAR DHAND),J

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