

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 18.10.2019

Date of Decision : 14.11.2019

CRL.REV.P. 642/2016 and CRL.M.A. 15115/2016 (stay)

AMIT LUHACH Petitioner
Through: Mr. Ashish Sehrawat, Mr. Kapil Yadav
and Mr. Ravi Kumar, Advocates.

versus

STATE OF NCT DELHI & ORS Respondents
Through: Ms. Manjeet Arya, APP for State with
SI Dham Singh, P.S. Subzi Mandi

CRL.REV.P. 715/2016

AKHILESH YADAV & ANR Petitioners
Through: Mr. Ashish Sehrawat, Mr. Kapil Yadav
and Mr. Ravi Kumar, Advocates with petitioner
No.2 in person.

versus

STATE OF NCT DELHI & ANR Respondents
Through: Ms. Manjeet Arya, APP for State with
SI Dham Singh, P.S. Subzi Mandi

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present revision petitions have been filed under Section 397 read with Section 401 Cr.P.C. assailing the order dated 09.08.2016 passed by the

Court of Addl. Sessions Judge-04 (Central), Delhi in the matter titled state vs. Akhilesh Yadav & Ors. arising out of FIR No.393/2014 registered under Section 308/34 IPC at Police Station Subji Mandi, Delhi.

2. As both the petitions arise out of the same FIR and impugn the same order, they are being taken up together and disposed of by a common order.

3. I have heard learned counsel for the parties as well as gone through the case records.

4. It has been submitted that as per the prosecution case, the alleged incident arose on 22.05.2014, where the son of the complainant during a cricket match had a minor verbal confrontation with one of his friends, Sanskar son of Akhilesh Yadav (Petitioner No. 1 in Crl. Rev. Petition No. 715/2016). The complainant on coming to know that Akhilesh Yadav and his other son namely, Aditya Yadav (Petitioner No. 2 in Crl. Rev. Petition No. 715/2016) were looking for his son, he reached the house of the petitioners to defuse the matter. However, not finding Akhilesh Yadav in his house, the complainant returned back. After some time, the petitioners along with others came to the complainant's house and while Akhilesh Yadav slapped the complainant and dragged him for a considerable distance, Aditya Yadav hit him with a brick from behind. At the same time, Akhilesh Yadav gave a blow on his head with an iron rod. It was alleged that in the incident, the complainant's wife, mother and a neighbour were also manhandled. It has been submitted that in the subsequent statement, the name of Amit Luhach (Petitioner in Crl. Rev. Petition No. 642/2016) was also specifically mentioned.

5. It was further submitted that initially, a *kalandara* under Sections 107/151 CrPC was registered against Akhilesh Yadav only. However, on the

directions by the Metropolitan Magistrate, in an application under Section 156(3) CrPC filed by the complainant, the present FIR came to be registered.

6. It is the contention of the learned counsel for the petitioners that the impugned order on charge dated 09.08.2016 passed by the trial court is a non-speaking order. It is contended that no reason has been assigned as to on what basis the trial court reached the conclusion that the prima facie case has been made out against the petitioners.

7. So far as the contention of the learned counsel for the petitioner that the order framing of charge should be a reasoned and detailed order, is concerned, it is profitable to reproduce Section 228 CrPC:-

“228. Framing of charge - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8. The order on charge should indicate that in the opinion of the trial court a prima facie case is made out against the petitioners. Such an order need not be a lengthy or detailed one. Time and again, it has been held that only when the trial court, after due application of mind and considering the material on record, comes to the conclusion different than to what the investigating agency has reached, a detailed order is required to be passed. There is no requirement in terms of Section 228 CrPC to record detailed and lengthy order if in the opinion of the trial court there is prima facie ground for proceeding against the accused.

9. The application of mind is sine qua non while at the stage of framing of charge. The application of mind, as required even at the stage of cognizance/issuance of process came before the Supreme Court in Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and Others reported as (2015) 12 SCC 420, held as under:-

“20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. to set in motion the process of criminal law against a person is a serious matter.”

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“22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements

and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. Nod doubt, no formal order or a speaking order is required to be passed at that stage. The Cod of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Section 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

23. *Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Section*

190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate.” (emphasis added)

10. A perusal of the impugned order would show that the same is bereft of any facts and does not indicate any application of mind. Even though no reasons are required to be given yet there must be some indication of application of mind by the trial court.

11. Accordingly, the impugned order is set aside and the matter is remanded back to the trial court to pass the order on charge afresh after hearing the parties.

12. Learned counsel for the petitioners has also raised certain other contentions on the merits of the case however, in view of the order being passed, the same are not required to be dealt with. Learned counsel for the petitioners will be at liberty to raise the same before the Trial Court.

13. The revision petitions are disposed of along with the pending application. Copy of this order be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 14, 2019

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