

IN THE HIGHCOURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 5th OF OCTOBER, 2023

CRIMINAL REVISION No. 4907 of 2022

BETWEEN:-

**1.ASHOK SONI S/O LATE SHRI DAYARAM SONI,
AGED 53 YEARS, OCCUPATION: GOVT. TEACHER
R/O VILL. INDERGARH TEHSIL SEONDA
DISTRICT DATIA (MADHYA PRADESH)**

**2. RAM PRASAD SONI S/O LATE SHRI DAYARAM
SONI, AGED 72 YEARS, OCCUPATION: RETIRED
EMPLOYEE R/O 40 CHANKYAPURI DARPAN
COLONY THATIPUR GWALIOR (MADHYA
PRADESH)**

**3. DR. DINESH SONI S/O SHRI RAM PRASAD SONI,
AGED 36 YEARS, OCCUPATION: DOCTOR R/O 40
CHANKYAPURI DARPAN COLONY THATIPUR
GWALIOR (MADHYA PRADESH)**

.....PETITIONERS

(SHRI SURESH AGRAWAL- ADVOCATE)

AND

**1.STATE OF MADHYA PRADESH THROUGH
SUPERINTENDENT OF POLICE DISTRICT DATIA
(MADHYA PRADESH)**

**2.TOWN INSPECTOR POLICE STATION LAUNCH
DISTRICT DATIA (MADHYA PRADESH)**

**3.RAJU BALMIK S/O SHRI BHAGIRATH BALMI
R/O VILLAGE KULAITH POLICE STATION
LAUNCH DISTRICT DATIA (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SUNIL KUMAR DUBEY- ADVOCATE FOR THE COMPLAINANT)

(SHRI NAROTTAM SHARMA- PANEL LAWYER FOR RESPONDENT/STATE)

This revision coming on for hearing this day, the court passed the following:

ORDER

This criminal revision under Section 397 read with Section 401 of CrPC is filed assailing the order framing charges against the petitioners dated 18.11.2022 passed in SC No.82/2022 by learned Special Judge, SC/ST (Atrocities Act), Datia whereby charges have been framed against the petitioners for offence punishable under Sections 294, 323 read with Section 34 of IPC, Section 3(2)(va) of Scheduled Castes and Scheduled Tribes Act, Section 506(part-II) of IPC and Section 3(1)(n)/(k) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

The petition *inter alia* states as under:-

(i) Petitioner No.1 is working as Teacher at Village Chimghan, Tehsil Seonda, District Datia. Petitioner No.2 is a retired Government Servant. They are real brothers. Petitioner No.3 is the son of petitioner No.2.

(ii) Petitioner No.2 has agricultural land in Village Kulaith, Tehsil Seonda, District Datia. He submitted a complaint at C.M. Helpline and Lokpal against the Sarpanch Rajendra Jatav, which is pending

consideration.

(iii) On 26.03.2022, Sarpanch Rajendra Jatav, Radha Balmik, Vedram, Naresh Baghel Sinnam, Hotam assaulted petitioner No.2, therefore, FIR in Crime No.44/2022 for offence punishable under Sections 341, 294, 323 and 506/34 of IPC was lodged against them. Raju (respondent No.3), who is husband of accused Radha, lodged FIR on 26.03.2022 against Ram Prasad Soni and petitioners for offence punishable under Sections 323, 294, 506/34 of IPC and Section 3(1)(d), 3(1) of Scheduled Castes and Scheduled Tribes Act.

(iv) The petitioner No.1 was at his school and petitioner No.3 was at Gwalior at the time of incident. They have been falsely implicated. The FIR against the petitioners is a counterblast to the FIR lodged by petitioner No.2. Without considering the documents filed by the petitioners, learned Special Judge framed charges against the petitioners *vide* order dated 18.11.2022.

Feeling aggrieved by the impugned order of framing charges against the petitioners, this revision petition is filed assailing the order dated 18.11.2022 on the following grounds:-

(i) The electronic evidence (CCTV), itself shows that petitioners were not on the spot of incident.

(ii) The false FIR is a counterblast for harassing the petitioners.

(iii) The Investigation Officer has not conducted fair investigation.

On such grounds, it is requested that the impugned order dated 18.11.2022 be set aside and the charges framed against the petitioners may also be set aside.

Learned counsel for the petitioners referring to FIR in Crime No.44 of 2022 submits that this FIR was registered by Ram Prasad Soni on 26.03.2022 at 18:40 hours. Thereafter, Raju Valimik (husband of accused Radha) lodged false FIR involving the petitioners at Police Station Lanch on 16.03.2022 at 22:12 hours. It goes to show that the subsequent FIR is a counterblast to the incident of assault on Ram Prasad Soni.

Learned counsel further referring to the certificates issued by Head Master, Government Primary School Chimghan, Datia and certain photographs contends that the petitioners were not present at the spot of incident. Learned trial Court without considering these defence documents proceeded to frame charges against the petitioners. Therefore, impugned order suffers from illegality.

Per contra, learned counsel for the State ably assisted by learned counsel for the complainants submits that the trial Court committed no error in framing charges against the petitioners on the basis of prosecution documents submitted along with the charge sheet.

Heard. Considered.

Under Section 397 of the Cr.P.C, the Court is vested with the power to call for and examine the record of any inferior Court for the purpose of satisfying itself as to legality and regularity of any proceedings or order made in a case. The object of this provision is to correct the patent defect or an error of jurisdiction or the perversity which has crept in the proceedings.

It has been held by the Supreme Court in the cases of ***State of Bihar Vs. Ramesh Singh***, AIR 1977 Supreme Court 2018, ***Superintendent and Remembrancer of Legal Affairs West Bengal Vs.***

Anil Kumar Bhunja, AIR 1980 SC 52, *Sanghi Brothers (Indore) Private Limited Vs. Sanjay Choudhary and Others*, 2009 Cr.L.J 338 and *Shoraj Singh Ahlawat Vs. State of U.P*, AIR 2013 SC 52: *Deepakbhai Jagdishchandra Patel vs. State of Gujarat* (2019) 6 SCC 547 that at the stage of framing charge, even a strong suspicion founded upon the materials before the Court, which leads to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence. The probative value of evidence brought on record can not be gone into at the stage of framing charges. The Court is required to evaluate the material and documents on record with a view merely to find out, if the fact emerging therefrom taken at their face value disclose ingredients constituting the alleged offence. The veracity and effect of the evidence are not to be meticulously judged at this stage, nor is any weight to be attached to probable defence of accused at the stage of framing of charges.

The Supreme Court in the case of *Amit Kapoor Vs Ramesh Chander and Another* (2012) 9 SCC 460, laid down principle to be considered for exercise of jurisdiction under Section 397 of the Cr.P.C, particularly in the context of quashing of charges framed under Sections 228 of the Cr.P.C.

“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.”

In the backdrop of aforesaid proposition of law, the contentions of both the parties are considered.

It is a trite law that the Judge/Magistrate is not mere postoffice to frame the charges at the behest of the prosecution. The application of judicial mind to the fact of the cases is essential but for framing of the charge mere strong suspicion founded upon the materials before the Court would be sufficient.

Learned trial Court has duly considered the FIR and the statement recorded under Section 161 of CrPC along with other material submitted

with the final report under Section 173 of Cr.P.C, to frame the charges. The main contention of the revision petitioners is that they were not present on the spot of incident at the time of alleged incident. The plea of *alibi* need to be established by accused as their defence, its effect would be considered after conclusion of the trial, in totality of circumstances which may appear from the evidence on record. Therefore, no prejudice is caused to the petitioner.

In view of the above, no patent illegality or perversity or irregularity is made out in the impugned order, therefore, the revision petition *sans* merit and is hereby **dismissed**.

(SANJEEV S KALGAONKAR)
JUDGE

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