NEUTRAL CITATION NO. 2025:MPHC-IND:11828

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S. KALGAONKAR

ON THE 5th OF May, 2025

CRIMINAL REVISION No. 1117 of 2025

KANHA & OTHERS

Versus

THE STATE OF MADHYA PRADESH & OTHERS

Appearance:

Shri Vishal Soni - Advocate for the petitioners.

Shri Madhusudan Yadav - Govt. Advocate for the respondent/State.

ORDER

This petition u/s 397 of Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.' hereinafter) and Section 438 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (in short, 'BNSS,2023' hereinafter) is filed assailing the order dated 10.01.2025 passed in S.T. No. 03/2025 by learned II Additional Session Judge, Dhar, whereby learned Additional Session Judge framed charges for offences punishable u/Sec 109 read with Section 3(5), Sections 296 and 351(3) of Bhartiya Nyaya Sanhita, 2023 (in short, 'BNS, 2023') against the accused/revision petitioners – Kanha, Lakhan and Pappu.

2. The exposition of facts in brief, giving rise to present petition, is as under:

On 08.12.2024, complainant Pawan went to Egg Shop of Gorelal where the accused Kanha was standing. Accused Kanha asked him to move his motorcycle and started abusing him in filthy language. Kanha called his

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brothers at the spot. Kanha (Revision Petitioner no. 1) assaulted him with slaps and fist blows. Lakhan (Revision Petitioner no. 2), with intention to kill, assaulted him with a sword on his head and Pappu (Revision Petitioner no. 3) assaulted him with wooden stick on his head, hands, right leg and back. Arvind and Shyamlal came to his rescue. Accused threatened to kill him and fled away. On such allegations, the P.S. Kotwali Distt. Dhar registered FIR for offence punishable u/Ss. 109 r/W 3(5) of BNS,2023 against Kanha, Lakhan and Pappu. Complainant Pawan was sent for medico legal examination. The statements of witnesses were recorded. Accused Kanha, Lakhan and Pappu were arrested on 09.12.2024. The Medical Officer opined that injuries caused to Pawan are dangerous to life. He would have died, if not treated on time. On completion of the investigation, final report was submitted before the Learned Judicial Magistrate First Class, Distt. Dhar. The JMFC, Dhar committed the case for trial to the Court of Sessions Judge, Dhar.

3. Learned IInd Additional Sessions Judge, Dhar *vide* order dated 10.01.2025 framed charges for offence punishable u/Ss. 109 read with Section 3(5), Sections 296, and 351 (2) of BNS, 2023 against Kanha , Lakhan and Pappu.

4. The impugned order and charges are assailed in present petition on following grounds:

(i) The complainant initiated the fight. It has falsely been alleged that an altercation took place between Kanha and the complainant which aggravated into physical scuffle.

(ii) The injuries suffered by the complainant are simple in nature. The Medical Officer on query has specifically opined that the injuries caused to Pavan are not grievous in nature. Learned trial Court ignored the opinion of

the medical expert while framing charge for offence punishable u/S 109 of BNS, 2023. The depth of injury and fatal nature is not mentioned in the MLC report.

(ii) There was no intention on part of the accused. Therefore, learned trial Court committed error in framing charges against accused.

On these grounds, it is prayed that the impugned order and the charges for offence punishable under Section 109 read with Section 3(5), Sections 296 and 351(3) of BNS, 2023 be set aside.

5. The learned counsel for the petitioners contends that the medical report is inconsistent and doubtful with regard to nature of injury caused to complainant/injured Pawan. The medico legal examination report does not reveal any life threatening or fatal injury. The incident occurred at the spur of moment therefore, the intention to kill cannot be inferred. Consequently, the offence punishable u/S 109 of BNS, 2023 is not made out.

6. *Per contra*, learned counsel for the State opposes the petition and submits that the alleged offences are clearly made out from the material on record. Learned trial Court committed no error in framing the impugned charges. The petition is meritless and deserves to be dismissed.

7. Heard both the parties, perused the record and the case diary.

8. Section 251 of BNSS,2023 provides as under-

> **Section 251: 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—
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> > (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 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 within a period of sixty days from the date of first hearing on charge.

9. In the case of ***Vinay Tyagi Vs. Irshad Ali*** reported ***in (2013) 5 SCC 762,*** the Supreme Court examining the scope of *pari materia* provision under Section 228 of Cr.P.C., held as under:

17. After taking cognizance, the next step of definite significance is the duty of the Court to frame charge in terms of Section 228 of the Code unless the Court finds, upon consideration of the record of the case and the documents submitted therewith, that there exists no sufficient ground to proceed against the accused, in which case it shall discharge him for reasons to be recorded in terms of Section 227 of the Code.

17.1 It may be noticed that the language of Section 228 opens with the words, 'if after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence', he may frame a charge and try him in terms of Section 228(1)(a) and if exclusively triable by the Court of Sessions, commit the same to the Court of Sessions in terms of Section 228(1)(b). Why the legislature has used the word 'presuming' is a matter which requires serious deliberation. It is a settled rule of interpretation that the legislature does not use any expression purposelessly and without any object. Furthermore, in terms of doctrine of plain interpretation, every word should be given its ordinary meaning unless context to the contrary is specifically stipulated in the relevant provision.

17.2. Framing of charge is certainly a matter of earnestness. It is not merely a formal step in the process of criminal inquiry and trial. On the contrary, it is a serious step as it is determinative to some extent, in the sense that either the accused is acquitted giving right to challenge to the complainant party, or the State itself, and if the charge is framed, the accused is called upon to face the complete trial which may prove prejudicial to him, if finally acquitted. These are the courses open to the Court at that stage.

17.3. Thus, the word 'presuming' must be read ejusdem generis to the opinion that there is a ground. The ground must exist for forming the opinion that the accused had committed an offence. Such opinion has to be formed on the basis of the record of the case and the documents submitted therewith. To a limited extent, the plea of defence also has to be considered by the Court at this stage. For instance, if a plea of proceedings being barred under any other law is raised, upon such consideration, the Court has to form its opinion which in a way is tentative. The expression 'presuming' cannot be said to be superfluous in the language and ambit of Section 228 of the Code. This is to emphasize that the Court may believe that the accused had committed an offence, if its ingredients are satisfied with reference to the record before the Court.

18. At this stage, we may refer to the judgment of this Court in the case of Amit Kapur v. Ramesh Chander & Anr. [JT 2012 (9) SC 329] wherein, the Court held as under :

> "16. The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited.
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> 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 sine qua non 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 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.
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> 18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases."

19. On analysis of the above discussion, it can safely be concluded that 'presuming' is an expression of relevancy and places some weightage on the consideration of the record before the Court. The prosecution's record, at this stage, has to be examined on the plea of demur. Presumption is of a very weak and mild nature. It would cover the cases where some lacuna has been left out and is capable of being supplied and proved during the course of the trial. For instance, it is not necessary that at that stage each ingredient of an offence should be linguistically reproduced in the report and backed with meticulous facts. Suffice would be substantial compliance to the requirements of the provisions.

10. Section 109 of BNS, 2023 reads as under:

> **Attempt to murder- (1)** Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

11. In the case of ***Shoyeb Vs. State of Madhya Pradesh*** reported in ***2024, INSC 731***, the Supreme Court, while explaining the *pari materia* provision in the IPC, held as under:

> 10. Section 307 IPC is the charge that the Courts below have concurrently, refused to frame. It reads as under:-
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> > "307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."
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> 11. Let us at this stage, consider the law as laid down by this Court in respect of this section, as also that of Section 34 IPC, given that there are a total of eight respondents (accused) before the court.
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> 11.1 In State of Maharashtra v. Kashirao reported in (2003) 10 SCC 434, the Court identified the essential ingredients for the applicability of the section. The relevant extract is as below:
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> > "The essential ingredients required to be proved in the case of an offence under Section 307 are:
> > (i) that the death of a human being was attempted;
> > (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
> > (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury."
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> 11.2 This Court in Om Prakash v. State of Punjab reported in AIR 1961 SC 1782,

as far back as 1961, observed the constituents of the Section, having referred to various judgments of the Privy Council, as under:

> "a person commits an offence under Section 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in Section 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression "whoever attempts to commit an offence" in Section 511, can only mean "whoever : intends to do a certain act with the intent or knowledge necessary for the commission of that offence". The same is meant by the expression "whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder" in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression "by that act" does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time." (Emphasis supplied)

11.3 Hari Mohan Mandal v. State of Jharkhand reported in (2004) 12 SCC 220 holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this section, so long as the injury is inflicted with animus. It has been held:

> "10. …To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. …What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
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> 11. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct

> to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt." (Emphasis supplied)

11.4 The principle governing the application of Section 34 has been captured thus in Chhota Ahirwar v. State of M.P. reported in (2020) 4 SCC 126:

> "24. Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This section does not whittle down the liability of the principal offender committing the principal act but additionally makes all other offenders liable. The essence of liability under Section 34 is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which consensus can even be developed at the spot as held in Lallan Rai v. State of Bihar [Lallan Rai v. State of Bihar, (2003) 1 SCC 268 : 2003 SCC (Cri) 301] . There must be a common intention to commit the particular offence. To constitute common intention, it is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused."

11.5 Sanjiv Khanna J., writing for the Court in Krishnamurthy v. State of Karnataka reported in (2022) 7 SCC 521, encapsulated, succinctly its field of operation as under:

> "26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34IPC are satisfied. We must remember that Section 34IPC comes into operation against the co- perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator…" (Emphasis supplied)

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12. In the case of ***Hari Mohan Mandal Vs. State of Jharkhand*** reported in ***(2004) 12 SCC 220***, the Supreme Court observed as under:

> In the factual scenario noted above, it has to be seen whether Section 307 IPC has application. Said provision reads as follows:
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> > "Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."
>
> To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt.
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> This position was highlighted in State of Maharashtra v. Balram Bama Patil and Ors. (1983 (2) SCC 28) and in R. Prakash v. State of Karnataka (2004 (2) Supreme 78). In Sarju Prasad v. State of Bihar (AIR 1965 SC 843) it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.
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> Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The

circumstance that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury.

13. In view of aforestated propositions of law, the material on record is examined. The investigation, subsequent to registration of FIR, revealed that both the accused had intention to cause injury to the complainant and in furtherance of common intention, allegedly Kanha assaulted Pawan with fist blows, Lakhan with intention to kill, assaulted Pawan with sword on his head and Pappu caused injury to Lakhan with wooden sticks in the same incident. The CT Scan of Pawan revealed soft tissue swelling in both parietal and left occipital regions with few internal air loculis. The Medical Officer opined that the injury caused to Pawan was dangerous to life. All the accused abused and threatened Pawan. The allegations and material was considered sufficient by the trial Court to presume that the accused had committed offence of "attempt to murder" punishable under section 109 of BNS, 2023. The learned additional Session Judge committed no error, impropriety or illegality in framing the aforestated charge. The exact nature of injury, the intention of the accused and the knowledge as to the circumstances under which the injury was caused to Pawan will be considered after the evidence in the trial. In view of above discussion, this court is of considered opinion that the impugned order does not suffer from any manifest impropriety, much less, an illegality. So, no case is made out for exercise of supervisory jurisdiction under section 438 Of BNSS 2023. Consequently, the revision petition is dismissed.

(SANJEEV S KALGAONKAR)
JUDGE

sh/-

SEHAR HASEEN

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