IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI

Cr.R. No.179 of 2022

Between:-
Harsh Meena, S/o Shri Harnam Singh Meena, Aged about 26 years, Occupation Student, currently residing at 158, Amarnath Colony, Kolar Road, P.S. Kolar Road, District Bhopal (M.P.)

....APPLICANT

(BY SHRI SANKALP KOCHAR AND SHRI BHAVIL PANDEY, ADVOCATES)

AND

1. State of Madhya Pradesh, Thr: Police Station M.P. Nagar, District Bhopal.

2. Satyam Dubey, S/o Late Shriram Dubey Aged about 25 years, R/o. H-21, Old Police Lines,Shahjahanabad, Bhopal (M.P.)

.....RESPONDENTS

(BY SHRI PRAKASH GUPTA, PANEL LAWYER)

Reserved on : 04.07.2022

Delivered on : 17.08.2022

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

O R D E R

Counsel for the applicant is heard on the question of admission.

2. The applicant has filed this revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, questioning the validity of the order dated 22.11.2021 (Annexure A/1) passed by the Sessions Judge, District Bhopal in Sessions Trial No. 974/2021 whereby the charge has been framed against the applicant by the trial Court under Sections 294, 333, 353, 307, 302 of IPC and under Section 25-1(B)(B) of Arms Act.

3. Learned counsel for the applicant submits that in pursuance to an FIR lodged on 07.08.2021 (Annexure A/2) offence under Sections 294, 333, 353 and 307 of IPC got registered against the present applicant. He submits that thereafter the injured died of septicaemia on 20.08.2021. He further submits that as per the facts of the case, after registration of FIR, the injured got hospitalized and was given treatment in Govt. Hospital, i.e. Jai Prakash Govt. Hospital in which the MLC was prepared showing that the complainant/injured had received an incised wound which was opined as simple injury. The injured was later on discharged from hospital on the same day, i.e. 07.08.2021 because the injury sustained by him was neither grievous in nature nor dangerous to life. He submits that the applicant was granted bail under Section 439 of Cr.P.C. by this Court vide order dated 04.01.2022 considering the fact that the injury was simple. A copy of bail order is filed on record as Annexure A/3 which indicates that the applicant was arrested on 07.08.202 for causing simple injury to the injured and the report of MLC was also seen by the Court referring the same in the order of

bail. But later on, when complainant/injured died on 20.08.2021, offence of 302 was also added. He submits that under the circumstances when the injured got discharged from hospital on the same day, but later on, becasue of septic, which as per doctor was the cause of death of injured, offence of 302 of IPC is not made out as it was due to negligence on the part of the doctors as they have not properly treated the injured and medication was not up to the mark. Learned counsel for the applicant submits that this fact was argued before the trial Court at the time of framing of charge, but the trial Court did not appreciate the facts in appropriate manner and observed that the cause of death was related to the injury sustained and caused by the present applicant. However, he submits that the trial Court should have considered the fact that the injury was caused on 07.08.2021 and on the same day, injured was given treatment and was also discharged from the hospital showing that the injury was simple in nature, but because of negligence or without there being any proper medication, if septic is developed and after almost 13 days of the incident, the injured died due to septicaemia, the offence under Section 302 of the IPC is not made out because by and large, the death cannot be connected with the injury caused by the present applicant and according to him, offence under Section 302 is not made out and therefore, he has assailed the order of trial Court framing charge of Section 302 against the present applicant. In support of his contention, learned counsel for the applicant has placed reliance upon a judgment of Supreme Court reported in **(2010) 9 SCC 368- Sajjan Kumar Vs. Central Bureau of**

Investigation wherein he has emphasised on paragraph 21 which reads under:-

> "21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-
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> *(i)* The Judge while considering the question of framing the charges under Section 227 of the 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.
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> *(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.
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> *(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.
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> (*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.
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> (*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.
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> (*vi*) At the stage of Sections 227 and 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

> discloses 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.
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> (*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 and at this stage, he is not to see whether the trial will end in conviction or acquittal.

He has also placed reliance upon the judgment of Supreme Court reported in **(2019) 7 SCC 515- State by Karnatka Lokayukta, Police Station, Bengaluru Vs. M.R. Hiremath** wherein he has emphasised on paragraph 25, which reads as under:-

> "25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan, adverting to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)
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> > "29. … At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the

> offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

Learned counsel for the applicant has further placed reliance upon the judgment of High Court of Jammu and Kashmir at Srinagar passed in **CRR. No.27/2010- State of J&K and another Through:- Ms. Asifa Padroo, AAG Vs. Tanveer Ahmad Salah and others**.

4. Shri Prakash Gupta, learned Panel Lawyer appearing for the respondent/State has opposed the submissions made by learned counsel for the applicant and supported the order passed by the trial Court saying that the Court has rightly framed the charge of Section 302 of IPC against the applicant. He has submitted that the cause of death shown by the doctor is septicaemia which admittedly got developed in an injury caused by the present applicant and as such, offence under Section 307 has rightly been converted into Section 302 of IPC. He has further submitted that it is only a charge and the applicant can argue the matter or after trial, can convince the Court that the offence under Section 302 is not made out against him on the basis of aforesaid material. He has also submitted that it is the doctor who is a material witness and can be examined during trial and during his examination, if he deposes that septicaemia was developed due to negligence on

the part of the doctors or for some other reason, then only it can be determined whether the offence under Section 302 of IPC is made out against the applicant or not. He has submitted that the trial Court can alter the offence of 302 at the time of judgment, but at the time of framing of charge, the scope of interference in the offence registered is very limited and according to him, the trial Court has not committed any error while framing the charge under Section 302 of IPC. He has placed reliance on a judgment of Supreme Court passed in **Cr.A. No.1820 of 2019(Arising out of SLP (Crl.) No.6964 of 2019)-Bhawna Bai Vs. Ghanshyam and others** wherein the Supreme Court has observed that while framing of charges, the Court should apply the judicial mind and should give reasons in concise manner for framing charges and if the trial Court has failed to apply its mind while framing the charges, the High Court may interfere by altering the charge. He has submitted that here in this case, the impugned order passed by the trial Court does not suffer from any irregularity and, therefore, the same does not call for any interference. He has submitted that the Supreme Court in the aforesaid case has also observed that at the time of framing of charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence. He submitted that in the present case, there is no strong proof that the death of the injured was not due to the injury caused by the applicant, but for some other reason. He has further placed reliance upon a judgment of the Supreme Court passed in **Cr.A. No.1508 of 2003-State of Maharashtra Vs. Salman Salim Khan and**

others in which the Supreme Court has observed that the truthfulness, sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. He has submitted that at this stage, it is not proper to form an opinion that offence of 302 is not made out. However, the trial Court after conducting the trial can reduce the same and alter the charge.

5. Learned Panel Lawyer has also placed reliance upon a judgment of Supreme Court reported in **(2009) 16 SCC 316- Veerla Satyanarayana Vs. State of Andhra Pradesh** in which the charge of Section 302 was framed though the death was caused due to septicaemia. He has submitted that in view of the order of the Supreme Court when death was caused due to septicaemia and offence got registered under Section 302, the order passed by the trial Court framing the charge under Section 302 against the present applicant does not suffer from any infirmity and as such, the revision is without any substance and is liable to be dismissed.

6. Considering the arguments advanced by learned counsel for the parties and on perusal of record, I am of the opinion that at this stage, it is very difficult to form an opinion even by the trial Court at the time of framing of charge that the cause of death was not directly related with the injury caused by the applicant. If the charge of Section 302 has been added at the time of framing of charge on the basis of opinion given in the MLC, the same can be altered only after examination of the doctor who had given opinion. Looking to the observation

made by the Supreme Court in the case of Sajjan Kumar (**supra**) in paragraph-21 which is quoted hereinabove, especially Clause (v)

> "(*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."

and further in the case of M.R. Hiremath (**supra**) in paragraph-25 which is reproduced herein

> ".....It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence....."
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> (Emphasis supplied)

and also in the case of Tanveer Ahmad Salah (**supra**) in paragraph-10, wherein the High Court of Jammu & Kashmir has observed that while considering the issue of framing of charge, the trial Court has to form an opinion on the basis of material placed on record by the Investigating Officer as to whether there is sufficient ground for presuming that the accused has committed offence or not and the material on record would constitute the statement of witnesses, injury report, post mortem report along with other material relied upon by the prosecution. At this stage, trial Court cannot

indulge in critical evolution of evidence, that can be done at the time of final appreciation of evidence after conclusion of trial.

7. Thus, in my considered opinion, the trial Court did nothing wrong because it can very well form an opinion at the time of trial or after conclusion of trial whether offence under Section 302 is made out or not. Taking note of the law laid down by the Supreme Court in the case of Veerla Satyanarayana (**supra**) wherein the Supreme Court has held that if death is caused due to septicaemia, offence under Section 302 of IPC is rightly made out, I am also of the opinion that the order passed by the trial Court does not suffer from any patent or material irregularity and at this stage, it is not proper for this Court to interfere in the same or to form an opinion that the offence under Section 302 is not made out against the applicant. However, liberty is always with the applicant to argue and convince the Court during trial that he cannot be charged under Section 302 of IPC and in that event, the order passed by this Court in this revision would not come in the way of trial Court for forming an independent opinion after conducting the trial.

8. Resultantly, the revision filed by the applicant being *sans merit,* is hereby **dismissed**.

(SANJAY DWIVEDI)
J U D G E

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