

The present case is preponed pursuant to Order No. R-235/RG/DHC/2020 of the Hon'ble High Court of Delhi after sending court notice through WhatsApp from the mobile phone of the Ahlmad Sh. Kamal Kaushal.

Present: None

Order on Charge

Brief facts of the present case as per the chargesheet are that on 24.09.2017, at about 10:50 p.m., on the basis of PCR call regarding one person lying injured on road and vide DD No. 38A, IO/SI Yogesh along with Ct. Dalip reached at the spot i.e. Nangal Raya flyover, Jail road, New Delhi where neither any eye-witness nor the injured was found. One cart (*Rehri*) along with weighing instruments (*Taraju and baat*) were found and seized by the IO. On receipt of information from duty officer, IO reached DDU Hospital where injured was found admitted in OT but he was not fit for giving statement as reported by the attending doctor. On the basis of circumstances and MLC of injured, IO got registered present FIR for the offences u/s 279/337 IPC. During investigation, IO came across one eye-witness namely Deepak, at whose instance, IO prepared the site plan. Name of the injured was found to be Rahmat Husain. Upon the death of injured, section 304A of IPC was added. Eye-witnesses namely Deepak and one bus driver Joginder revealed that the offending vehicle was one swift car bearing No. DL-9CAC9653. Thereafter, Notice u/s 133 M.V. act was served upon the registered owner, pursuant to that notice, accused Harvinder Singh appeared at PS along with the offending vehicle and replied in writing that, "I am the driver of this vehicle and i am driving this car all the time and no driver drivers this car. Accident has taken place by me." It is stated that on seeing the eyewitness at PS, the accused has scored off the word "No" before the expression "Accident has taken place by me."

Thereafter, accused was arrested. After completion of necessary formalities, charge sheet was filed in this Court. Cognizance of the offences was taken. The accused was summoned.

Copy of Chargesheet along with documents were supplied to the accused.

This court has heard the oral arguments addressed by Sh. Mahender Dhawan, Ld. counsel for the accused and Ld. APP for state in the court as well as through video conferencing (Cisco Webex). This court has also perused the written submissions/discharge application filed on behalf of the accused on court's e-mail ID i.e. mm03west@gmail.com.

It is contended on behalf of the accused that the accused is falsely implicated in the present case by the the Investigating officer as he himself has stated categorically in the Challan filed by him, after due completion of the investigation, that the deceased was going on the wrong side of the road with his *rehri* when accident took place. It is argued that the charge Sheet filed by the I.O shows that no recovery of any body part of the offending vehicle has been made by the I.O and he is simply relying on an imaginary and fictitious story just to falsely implicate the accused. Neither in the DD entry nor in the FIR, the correct particulars of offending vehicle are stated. Even the eyewitnesses had made mention of one Swift car whereas the car of accused is Wagon R.

On the other hand, Ld APP for the state submitted that there is sufficient material on records to frame charge/notice against the accused.

It is always to be remembered that all the stage of framing charges, evidence of prosecution has not yet commenced. Accordingly, only the sufficiency of ground of proceedings against the accused on a general consideration of materials placed before the court by the investigating police officer are to be considered. Truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be meticulously judged. Same standard in appreciation of evidence as would be applied at trial to find whether accused is guilty is not exactly to be applied at the stage of consideration of framing a charge. At that stage even a very strong suspicion presumptive opinion as to 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. **(See Supdt. and Remember of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja AR 1980 SC 52; Nitaipada Das Vs. Sudarshan Sarangi & Anr. 1991 Crl J 3012.)**

Further, it is also settled law that at the stage of framing of charge, only the police report as referred to in Section 173 Cr.P.C. is required to be referred to. This aspect of the law has been adverted to in **State Anti Corruption Bureau, Hyderabad and Another V.P. Suryaprakasam; 1999 SCC (CrI.), 373** where considering the scope of Sections 239 and 240 of the Cr.P.C., it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. This position of law was reiterated by a three Judge Bench of the Apex Court in the case of **State of Orissa Vs. Debendra Nath Padhi AIR 2005 SC 359.**

Therefore, what is crystal clear is that at the stage of the framing of charge, the Court is not at all to look into the possible defences of the accused or the merits of the defences likely to be taken up the accused. This aspect of framing of charge is to be considered solely from the point of view of police report as referred to in Section 173 Cr.P.C.

It is pertinent to note that at this stage eyewitness namely Deepak has identified the accused at police station, when the accused appeared there along with the offending vehicle, as the person who was driving the offending vehicle on the date of accident. As per the mechanical inspection report the bonnet as well as the front side of offending vehicle was freshly repaired/ painted. As regard the contention of Ld. defence counsel that the victims himself was negligent as he was moving along with his *rehri* on the wrong side of the road, it is well settled that contrary negligence is no defence in criminal law. It has been held by Hon'ble Allahabad High Court in the case of **Shiva Ram vs The State, AIR 1965 All 196, 1965 CriLJ 524** relying upon the observation made by Hon'ble justice Agarwala in AIR 1950 All 300 that

"Now what may be called a negligent act in civil proceedings is not necessarily so in criminal cases. The principles of liability governing civil actions based on negligence differ from those governing criminal liability in two Important particulars; firstly, that negligence in a criminal case must be culpable and gross and not the negligence which is merely based upon an error of judgment, or arises because of defect of intelligence; and secondly, that the principle of the avoidance of liability when there is contributory negligence by the injured person is no defence in criminal Law."

As per the version of eye-witnesses namely Deepak and Joginder, the offending vehicle i.e. swift car bearing no. DL-9CAC-9653 was moving in a very fast speed on the downward slope of Nangal Raya flyover towards Lajwanti chowk, firstly it overtook DTC bus no. DL-1PC-1068, in which both the eye-witnesses were present, and then it badly hit the *Rehriwala*, who was moving on the wrong side. On seeing the passengers of the bus, the accused fled from the spot in the offending vehicle which was damaged from the front side. Under these circumstances, this court is of the opinion that prima facie there is sufficient material on record to indicate that the accused Harvinder singh has committed offences punishable u/s 279, 304A & 201 of IPC. Accordingly, put up for framing of notice on date already fixed i.e. on 20.06.2020. Let copy of this order be supplied to the Ld. defence counsel through whatsapp.

Pronounced through cisco webex (video conferencing),
On 23rd May, 2020.



(Pankaj Arora)
MM-03/West/THC/Delhi