THE HIGH COURT OF MADHYA PRADESH
CRR 1828/2018
Chandra Shekhar @ Lalla @ Chandu vs. State of MP

Gwalior, dated 24/04/2018

Shri RK Sharma, Senior Counsel with Shri MK Chaudhary, counsel for the applicant.

Shri Shiraz Qureshi, Public Prosecutor for the respondent/State.

This Criminal Revision under Section 397/401 of CrPC has been filed against the order dated 21/03/2018 passed by Fifth Additional Sessions Judge, Gwalior in Sessions Trial No. 503/2017, by which the charges under Sections 294 and 307 of IPC have been framed.

The necessary facts for the disposal of the present revision in short are that the complainant Sanjay Chandel lodged a FIR on 08/06/2015 to the effect that at 17:00 he along with other friends had gone on their motorcycles to attend JD Fashion show organized in Salasar Brand Factory.After parking their motorcycles behind Salasar Brand Factory, they went to see the fashion show. After attending the show at about 05:30 pm when they went to take their motorcycles, then the Security Guard of Gold Cinema, namely, Alok Garg came there and alleged that why they have parked their vehicles at that particular place and alleged that it is a parking place of Municipal Corporation and for parking the vehicles, necessary fee is required to be paid, then the complainant and his companions said that they would remove the vehicles. On this issue, Alok Garg started abusing them. In the meanwhile, the Contractor of Municipal Corporation, the applicant and co-accused Banti came there and started using abusive language. The applicant with an intention to kill the complainant, gave a blow on the back side of the head of the complainant by means of an iron rod, as a result of which blood started oozing out and the other co-accused persons started assaulting the complainant by fists and blows. The complainant was saved by his

companions Anil Sharma, Sonu Bhadauria and others. Thus, it was alleged that the applicant and other co-accused persons with an intention to kill the complainant had not only abused him but had assaulted him by fists and blows as well as by an iron road. It was also alleged that his camera had also fallen down, as a result of which it is not functioning properly. The police after completing the investigation, filed the charge sheet for offence under Sections 307, 294, 34 of IPC.

The trial Court by order dated 21/03/2018 passed in Sessions Trial No.503/2017, framed the charge under Sections 294, 307 of IPC against the applicant.

Challenging the charge framed by the trial Court, it is submitted by learned senior counsel for the applicant that in the MLC report of the complainant, only two injuries were found, which are as under:-

(i) Lacerated wound on left parieto-occiptal region;

(ii) Tenderness 2x2cm back of right shoulder.

It is submitted that as per the opinion of the doctor, both the injuries were simple in nature. It is submitted that as the injuries were simple in nature, therefore, at the most, the offence would be under Section 323/324 of IPC. Even for the sake of arguments that if some serious offence, then at the most, it would fall under Section 308 of IPC but in no case, an offence under Section 307 of IPC would be made out. However, during the arguments, it was fairly conceded that even if the present revision is allowed, then the applicant shall not be discharged in toto, but the contentions of learned Senior Counsel for the applicant is that the applicant would be tried for a lesser offence. To buttress his submissions, the learned senior counsel for the applicant has relied upon the judgments of the Supreme Court in the cases of **Pashora Singh and Another vs. State of Punjab,** reported in **AIR 1993 SC 1256, Fireman Ghulam Mustafa vs. State of Uttaranchal (Now Uttarakhand)** reported in **AIR 2015 SC 3101,**

Sakharam vs. State of Madhya Pradesh and Another, reported in **(2015) 10 SCC 557, Rekha Mandal and Others vs. The State of Bihar,** reported in **1967 CRA 108 (SC),** and the judgments of this Court in the cases of **Virendra Kumar Pyasi vs. State of MP,** reported in **1993 (ii) MPWN 77, Chunnilal vs. State of MP** reported in **2002(I) MPWN 92.** It is further submitted by learned senior counsel for the applicant that from the FIR itself, it is clear that there is no enmity between the parties and the quarrel took place all of a sudden and since no repeated blows were given to the complainant, it clearly indicates that there was no intention on the part of the applicant to kill the injured.

Per contra, it is submitted by counsel for the State that for framing of charge under Section 307 of IPC, the nature of injuries is not necessary. The only aspect which has to be considered is the intention or the knowledge and some overt act in furtherance of that intention or knowledge on the part of the accused. Even Section 307 of IPC does not speak of any grievous injury or any injury dangerous to life but second part of Section 307 of IPC merely speaks about the ''hurt''. Therefore, where the hurt is caused with intention or knowledge to kill the complainant, then *prima facie* offence under Section 307 of IPC would be made out.

Heard the learned counsel for the parties.

It is well settled principle of law that in order to *prima facie* make out an offence under Section 307 of IPC, the nature of the injuries is not the sole criteria. The Supreme Court in the case of **Anjani Kumar Choudhary Vs. State of Bihar,** reported in **(2014) 12 SCC 286** has held as under:-

> **''10.** The scope of Section 307 IPC has elaborately been dealt with by this Court in *Mohan case [(2013) 14 SCC 116]* (SCC pp. 121-22, para 14), wherein this Court has taken the view that if anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract Section 307 IPC.

Further, this Court has also taken the view that, in order to attract Section 307 IPC, the injury need not be on the vital part of the body.

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16. The statements of the witnesses Baiju and Manoj Chaudhary are also in the same lines. What is discernible from the above statements is that the first accused and others, while committing the alleged offence, had exhorted that they would kill the appellant if the money was not paid. Open announcement by the accused and others that the appellant would not be alive to practise in the High Court, would prima facie indicate that the intention of the accused was, what he had spoken, followed by the infliction of injuries. Further, when several persons attack an unarmed person with deadly weapons, it is reasonable to presume that they had knowledge or intention that such an attack would result in death. In the instant case, as per the statements, the weapons used were lathi, rod, farsa, talwar, etc. and when we look at the nature of the injuries, it is clear that the injuries were caused by using sharp-cutting weapons and also with hard blunt substance. Injuries were inflicted on the right temporal region of scalp at the base of the right ear, right side of occipital region of scalp, left side of occipital region of scalp, etc. Open declaration by the accused that a person would be killed, indicates his intention and, as held by this Court in *Vasant Vithu Jadhav* v. *State of Maharashtra [(2004) 9 SCC 31]*, the question as to whether there was an 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 which has to be attributed on evidence by the trial court. The above facts would indicate that the ingredients of Section 307 IPC are made out.

17. We make it clear that this is only a prima facie view to decide as to whether the FIR and the statements of the witnesses contain averments so as to charge-sheet the accused under Section 307 IPC and ultimately it is for the trial court to decide whether the offence under Section 307 IPC has been made during trial, which ought to be ultimately decided on the basis of evidence tendered before the criminal court."

In the case of **Jage Ram Vs. State of Haryana** reported in **(2015) 11 SCC 366** , the Supreme Court has held as under :-

''12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (*i*) the intention to commit murder; and (*ii*) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.

13. In *State of M.P.* v. *Kashiram [(2009) 4 SCC 26]*, the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under: (SCC pp. 29-30, paras 12-13)

> "*12*. … '*13*. 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. 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, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra* v. *Balram Bama Patil [(1983) 2 SCC 28]*, *Girija Shankar* v. *State of U.P. [(2004) 3 SCC 793]* and *R. Prakash* v. *State of Karnataka [(2004) 9 SCC 27]*.

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16. 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 circumstances 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 the intention or knowledge, as the case may be, and not the nature of the injury.' See *State of M.P.* v. *Saleem [(2005) 5 SCC 554]*, SCC pp. 559-60, paras 13-14 and 16.

'*6*. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal* v. *State of T.N. [(1991) 3 SCC 471] '* (*Saleem case [(2005) 5 SCC 554]*, SCC p. 558, para 6)"

The Supreme Court in the case of **State of Maharashtra vs. Balram Bama Patil and Others,** reported in **(1983) 2 SCC 28** has held as under:-

''9. Shri Rana appearing for the State strenuously contended that the High Court has committed a grave error in holding that the offence under Section 307 IPC was not made out merely because the injuries inflicted on the witnesses were in the nature of a simple hurt and in these circumstances it is not possible to hold any of the accused persons guilty in respect of that offence. We find considerable force in this contention. A bare perusal of Section 307 IPC would show that the reasons given by the High Court for acquitting the accused of the offence under Section 307 were not tenable. Section 307 IPC reads:

> "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 this 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.''

The Supreme Court in the case of **Ratan Singh vs. State of Madhya Pradesh and Another,** reported in **(2009) 12 SCC 585** has held as under:-

''4. "*11*. It is to be noted that the alleged offences are of very serious nature. Section 307 IPC relates to attempt to murder. It reads as follows:

'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.'

12. 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.

13. 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. 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, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra* v. *Balram Bama Patil(1983) 2 SCC 28* , *Girija Shankar* v. *State of U.P. (2004) 3 SCC 793* and *R. Prakash* v. *State of Karnataka (2004) 9 SCC 27*"

See *State of M.P.* v. *Saleem (2005) 5 SCC 554* (SCC pp. 559-60, paras 11-14) and *State of M.P.* v. *Imrat (2008) 11 SCC 523.*

5. "*15*. In *Sarju Prasad* v. *State of Bihar AIR 1965 SC 843* it was observed in para 6 that [the] 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.

16. 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 circumstances 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 the intention or knowledge, as the case may be, and not the nature of the injury. The basic difference between Sections 333 and 325 IPC is that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets

> attracted if such hurt is caused to a public servant.
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> *17*. Section 307 deals with two situations so far as the sentence is concerned. Firstly, 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 secondly 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 indicated in the first part i.e. 10 years. The maximum punishment provided for Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine."
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> **6.** In view of what has been stated above, the impugned order of the High Court is clearly unsustainable. The scope of interference under Section 482 of the Code at the present juncture as was done by the High Court is clearly unsustainable.''

Thus, for framing of charge under Section 307 of IPC, nature of injury is not material. The material aspect is the intention or knowledge and some overt act in furtherance of that intention or knowledge. In the present case, the dispute took place on the question of parking of vehicle at a particular place. When the complainant himself was ready to remove his vehicle from the parking area, then there was no need for the applicant or other co-accused persons to pick up the quarrel with the complainant. From the charge sheet, it is clear that there is nothing on record to suggest that the complainant had acted violently at any point of time. Therefore, there was no reason for the applicant to give a blow on the back of the head of the complainant by means of an iron rod. So far as the intention or knowledge is concerned, it is something which is in the mind of the accused, which has to be ascertained from his conduct. In the present case, for no reason the applicant had chosen a vital part of the body of the injured for assaulting by means of an iron rod. Iron rod, at this stage, can be said to be a deadly weapon. Merely because the complainant had sustained a simple injury on his

head, would not *ipso facto* mean that there was no intention or knowledge on the part of the applicant to kill the complainant. Choosing a vital part of the body of the complainant knowingfully well that if a fatal blow caused by a deadly weapon, it may result in death, therefore, such an act is sufficient to frame charge under Section 307 of IPC. If the intention of the applicant was not to kill the deceased, then he could have chosen other parts of his body but since the blow was given on the back of the head of the complainant clearly shows that blow was given on the back of the complainant with an intention or knowledge. That was not the end of the matter. After the blow was given, the complainant was assaulted by the applicant and other co-accused persons by fists and blows. Furthermore, even if the submissions made by learned counsel for the applicant are accepted, then it is clear that the applicant can not be discharged *in toto,* he has to be tried for his attack on the complainant by means of an iron rod. Even otherwise, it is well-established principle of law that where the accused is tried for graver offence, then he can always be convicted for a lesser offence but not vice versa. Thus, it is for the trial Court, after recording the evidence tested on the touchstone of the cross-examination, to come to a conclusion that whether an offence under Section 307 of IPC is made out or not and whether the applicant is guilty of any lesser offence or not? It is well-established principle of law that at the stage of framing of charges the possibility of committing an offence is sufficient.

The Supreme Court in the case of **Central Bureau of Investigation vs. K. Narayana Rao** reported in **(2012) 9 SCC 512** has held as under:-

> **"14.** While considering the very same provisions i.e. framing of charges and discharge of the accused, again in *Sajjan Kumar (2010) 9 SCC 368*, this Court held thus: (SCC pp. 375-77, paras 19-21)
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> "*19*. It is clear that at the initial stage, if there is a strong suspicion which leads the court to

think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(*i*) The Judge while considering the question of framing the charges under Section 227 CrPC 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.

(*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.

(*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.

(*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.

(*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.

(*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 disclose 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.

(*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."

The Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander & Anr.** reported in **(2012) 9 SCC 460** has

held as under:-

> **"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 the 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.** x x x x x x x
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> **19.** At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar* v. *Ramesh Singh (1977) 4 SCC 39*: (SCC pp. 41-42, para 4)
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> "*4*. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge

against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— … (*b*) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the

initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

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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.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such

cases, the court would not embark upon the critical analysis of the evidence.

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.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

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.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito*

justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

(Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949]; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892]; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059]; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497]; Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995 SCC (Cri) 634]; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412]; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356]; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297]; Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260]; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; M. 8 MCRC.6606/2015 Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19]; Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M. Datta v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201]).

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the

proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

28. x x x x x x x

29. In the light of the above principles, now if we examine the findings recorded by the High Court, then it is evident that what weighed with the High Court was that firstly it was an abuse of the process of court and, secondly, it was a case of civil nature and that the facts, as stated, would not constitute an offence under Section 306 read with Section 107 IPC. Interestingly and as is evident from the findings recorded by the High Court reproduced supra that "this aspect of the matter will get unravelled only after a full-fledged trial", once the High Court itself was of the opinion that clear facts and correctness of the allegations made can be examined only upon full trial, where was the need for the Court to quash the charge under Section 306 at that stage. Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings.

30. We have already noticed that the legislature in its wisdom has used the expression "there is ground for presuming that the accused has committed an offence". This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in *State of Maharashtra* v. *Som Nath Thapa (1996) 4 SCC 659* referred to the meaning of the word "presume" while relying upon *Black's Law Dictionary*. It was defined to mean "to believe or accept upon probable evidence"; "to take as proved until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of

> such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence."

The Supreme Court in the case of **P. Vijayan vs. State of Kerala and Anr.** reported in **2010 CRI. L.J. 1427** has held as under:-

> "10. 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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

The Supreme Court in the case of **State of Bihar vs. Ramesh Singh** reported in **AIR 1977 SC 2018** has held as under:-

> "... ...Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the

> Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. …. ”
>
> This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused.”

The Supreme Court in the case of **Union of India vs. Prafulla Kumar Samal,** reported in **AIR 1979 SC 366** has held as under:-

> “(*1*) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.
>
> (*2*) 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.
>
> (*3*) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him

> while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
>
> (*4*) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

The Supreme Court in the case of **Niranjan Singh vs. K.S. Punjabi vs. Jitendra Bhimraj Bijjaya,** reported in **AIR 1990 SC 1869** has held as under:-

> "Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh (AIR 1977 SC 2018) this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the

> prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal *(AIR 1979 SC 366)* this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence."

It is well-established principle of law that at the time of framing of charges, meticulous appreciation of evidence is not required and even a strong suspicion is sufficient to frame the charges. If the allegations made against the applicant are considered, then it is clear that there appears to be strong suspicion against the applicant warranting framing of charges.

Considering the totality of the allegations and the facts and circumstances of the case, this Court is of the considered opinion that the trial Court did not commit any mistake in framing the charge under Sections 307, 294 of IPC.

Accordingly, the order dated 21/03/2018 passed by Fifth Additional Sessions Judge, Gwalior in Sessions Trial No.503/2017 is hereby affirmed.

Before parting with this order this Court finds it appropriate to mention that the observations in the earlier part of this order have been made considering the limited scope of interference at

the stage of framing of charge. The trial Court is requested to decide the trial exclusively in the light of the evidence which would come on record without getting prejudiced by any of the observations made by this Court.

This revision fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

MKB