
(2023) 03 DEL CK 0204

In the Delhi High Court

Case No : Criminal Revision Petition No. 163 Of 2023, Criminal Miscellaneous Application No. 7469 Of 2023

Veer Singh Bhadana

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 21-03-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 227, 228, 239, 240
Indian Penal Code, 1860 — Section 34, 307, 308

Citation : (2023) 03 DEL CK 0204

Hon'ble Judges : Dinesh Kumar Sharma, J

Bench : Single Bench

Advocate : Varun Goswami, Ankit Kakkar, Hritik Chaudhary, Raghvinder Verma

Final Decision : Disposed Of

Judgement

Dinesh Kumar Sharma, J

1. Present petition has been filed challenging the impugned order dated 23.08.2023, which reads as under:

"23.08.2022

Present : Sh. Shiv Kumar, Ld. Substitute Addl. P.P. for the State.

Sh. Harish, Ld. Counsel for all accused.

All accused present on bail.

Framing of charge conceded.

After going through the contents of the chargesheet and the documents annexed therewith, grounds exist to proceed against the accused persons (1) Sachin Basoya and (2) Yogesh Basoya for offences under sections 308/34 IPC. Another charge framed against accused (3) Veer Singh for offense under section 307 IPC.

Charges have been framed accordingly to which accused persons have pleaded not guilty and claimed trial.

Put up for PE on 05.12.2022.”

2. Mr.Varun Goswami, learned counsel for the petitioner submits that arguments on behalf of the accused persons were never heard as even reflected from the order-sheet and learned Additional Sessions Judge has framed the charges as having been conceded by learned counsel for the accused persons. Learned counsel submits that Mr.Harish, whose appearance has been marked for all the accused person were never representing his client.

3. Learned APP submits that in the circumstances of the case, an appropriate order may be passed.

4. The impugned order dated 23.08.2022 indicates that learned Additional Sessions Judge has proceeded to frame the charge merely because the same has been conceded by Mr.Harish, learned counsel for all the accused persons. It has been stated at bar that Mr.Harish was not representing the present petitioner i.e. Veer Singh Bhadana. Even otherwise, the charges under the serious offence i.e. 307 IPC could not have been framed merely having been conceded by the learned counsel. It is settled proposition that Section 228 Cr.P.C. provides that the learned court can frame the charges only after consideration and hearing if there are grounds for presuming that the accused has committed an offence. The right to be heard is an important right and cannot be dispensed with in any manner.

5. Reliance has been placed on Bharat Uttam Rajurkar and Others vs. the State of Maharashtra in Criminal Writ Petition No.1232 of 2017 dated 12.01.2018, it was inter alia held as under:

“After all, framing of charge is a serious business. When Sections 239 and 240 of Cr.P.C. mandate that charge must be framed after giving an opportunity of hearing to the accused, the mandate must be followed realistically and not presumptively. The view taken in the cases of Ambadas and Hitesh, cited earlier (Ambadas Kashirao Kharad and others vs. State of Maharashtra, 2007 (1) MHLJ. (Cr.) 517 and Shri Hitesh Kisorechand Raithatha & Ors. vs. State of Maharashtra & Anr., 2008 ALL MR (Cri) 3445), though in respect of scope and applicability of , Sections 227 and 228 of Cr.P.C. would, in my considered opinion, cover the issue of right of accused to be heard before framing of charge in terms of , Sections 239 and 240 of Cr.P.C., as well, as all these provisions, at their base, are similar”

6. It is also pertinent to mention that the provisions of the Criminal Procedure code puts an obligation on the learned Sessions Court to hear the submissions of the accused and the prosecution before framing of the charges. The procedure prescribed in these Sections cannot be taken as an empty formality. The trial courts are bound to comply with these provisions of law in the letter and spirit.

7. In consider that in these circumstances, the impugned order cannot be

sustained. Hence the impugned order dated 23.08.2022 is set aside. The matter is remanded back learned trial court for according an opportunity of being heard to the learned counsel of the accused persons and then proceed as per law.

8. With the above directions, the petition along with the pending application stands disposed of.

9. Parties are directed to appear before the trial court on 29.03.2023 at 2:00 p.m.

10. Next date i.e. 10.07.2023 stands cancelled.