

**HIGH COURT OF SIKKIM, GANGTOK
(Criminal Revisional Jurisdiction)****Crl. Rev. P. No.04/2015****PETITIONERS**

1. Mr. Sonam Namgyal, 33 years,
Son of Pema Wangchen,
Resident of Bagthang, Luing Road,
P.O. & P.S. Gangtok,
East Sikkim.
2. Roden Wangdi Sherpa, 33 years,
S/o. Sonam Wangdi Sherpa,
Resident of H. D. Lama Road,
Darjeeling, West Bengal,
At present:- C/o Lakpa Doma Bhutia,
Above Hidden Forest,
Sichey, Gangtok, East Sikkim.

- Versus -**RESPONDENT**

State of Sikkim.

Crl. Rev. P. No.06/2015**PETITIONER**

Gurme Wangchuk Wazallingpa @ Gyurmey,
Son of Shri Topjor Dorjee,
R/o New Libing House,
Gangtok,
East Sikkim.

- Versus -**RESPONDENT**

State of Sikkim.

O R D E R**(15.06.2015)****SUNIL KUMAR SINHA, CJ.**

1. Heard on admission.
2. Petitioners are the 3 (three) accused in S.T. Case No.19 of 2013, pending in the Court of Principal Sessions Judge, East & North Sikkim at Gangtok. They are

aggrieved with the Order dated 05.03.2015 by which charges have been framed against them U/Ss. 302, 325, 323 and 506 read with Section 34 of the IPC.

3. At around 0130 hrs. on 19.05.2013, deceased Rakshit Meena and his two friends, namely, Arindam Parmar and David Vinod, were assaulted by the 5 (five) accused persons, including the 3 (three) Petitioners, on the stairs of Café Live and Loud. They were also assaulted by them outside the Café. The assailants were unknown to the deceased and victims. On investigation, the 5 (five) assailants, including the Petitioners, were apprehended and were put for identification by the victims and their friends (eye-witnesses), who rightly identified them. The Test Identification Parade (TIP) was conducted by the District & Sessions Judge, Special Division-I, Sikkim at Gangtok.

4. Mr. D. K. Pradhan, learned Counsel appearing on behalf of the Petitioners in Crl. Rev. P. No. 04/2015, contended that there were many infirmities in conducting the TIP. He also contended that the TIP was conducted very late, therefore, there were chances of seeing the accused persons by the witnesses. Mr. Siladitya Sanyal, learned Senior Counsel appearing on behalf of the Petitioner in Crl. Rev. P. No. 06/2015, also raised similar arguments, however, he categorically submitted that Petitioner, Gurmee Wangchuk Wazallingpa was not identified by all the witnesses and he was only identified by Amber Chandra from whose possession the camera of the deceased was seized, in which, there was photograph of accused Gurmee Wangchuk Wazallingpa. He cited the decisions of **Vijayan vs. State of Kerala : (1999) 3 SCC 54**; **Dilawar Babu Kurane vs. State of Maharashtra : 2002 CRI. L. J. 980**; **Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra : (2008) 10 SCC 394**; and **Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao : (2012) 9 SCC 512**.

5. **Vijayan** (*supra*) was a case in which photograph of the accused was shown to the witnesses and, in fact, it was published in all local newspapers. It is in these circumstances, while hearing the appeals, it was held that the TIP was rightly disbelieved by the Trial Judge. Here, the Petitioner, Gurmee Wangchuk Wazallingpa, has challenged the order of framing of charges. It is not the case that he was taken up into the custody and, thereafter, his photograph was shown to the witnesses by whom

the TIP was proposed. In the instant case, on the basis of the photographs available in the camera of the deceased, the Police apprehended the accused, who later on was put for identification.

6. In other cases, law relating to jurisdiction of the Court under Section 227 CrPC has been defined. It has been held that while assessing the facts for framing of charges, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. It has been held that the test to determine a *prima facie* case depends upon the facts of each case and in this regard, it is neither feasible nor desirable to lay down a rule of universal application. In **Dilawar Babu** (*supra*), the Supreme Court went on to say that 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 the charges.

7. I have no doubt about the propositions laid down in the above mentioned cases, however, the principle remains that at this stage, the Court, on perusal of evidence, has only to find out whether there exists sufficient ground to take the view that a *prima facie* case is made out to proceed against the accused. If the Court is satisfied about the existence of *prima facie* evidence, the charges would be framed accordingly, but when even accepting as it is the evidence, which the prosecution proposes to adduce, no case is made out against the accused, the Court shall be right in procedure to discharge him.

8. In case on hand the deceased was beaten by unknown persons. The accused persons then were apprehended by the Police and a TIP was conducted. In the TIP, all the 5 (five) accused persons were identified by different eye-witnesses. Gurmee Wangchuk Wazallingpa was identified by Amber Chandra. Thus, there was sufficient evidence against the Petitioners. The argument that there was photograph of Petitioner - Gurmee Wangchuk Wazallingpa in the camera of the deceased which was seized from Amber Chandra and there was a possibility of seeing his photograph in the camera thereby vitiating the TIP, cannot be accepted at this stage, because, it would need appreciation of evidence which exercise cannot be taken by the trial Court

while framing the charges. The case of Gurmee Wangchuk Wazallingpa is different then one in which the photographs were published in newspapers and was purposely shown to the witnesses who had to identify the accused.

9. There are sufficient materials against the Petitioners. The revision petitions are liable to be dismissed and are, accordingly, dismissed.

Sd/-
Chief Justice
15.06.2015

Approved for Reporting: ~~Yes~~/No.
Internet : Yes/~~No~~.

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