

18.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 588/2008

Date of decision: 6th October, 2010

JAGAT SINGH RAWAT Petitioner
Through Mr. Satish Tamta & Ms. Ruchi
Kapur, Advocates.

versus

STATE Respondent
Through Ms. Fizani Husain, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER (ORAL)

1. This revision petition is directed against the order on the point of charge dated 3rd September, 2008. By the impugned order the trial court has directed framing of charge against the petitioner-Jagat Singh Rawat and Rajinder Kumar Datoniya under Sections 409 and 120B of the Indian Penal Code, 1860 (hereinafter referred to as IPC, for short).

2. Learned counsel for the petitioner submits that by the impugned order, charge under Section 392/397/477 IPC has also been directed to be framed against Rajinder Kumar Datoniya as there is an allegation in the charge sheet that Rajinder Kumar Datoniya had shown a pistol to the petitioner and had taken away the file before it was destroyed. Thus there is a contradiction in the said charges. Learned counsel for the petitioner relies upon *Kailash Kumar Sanwatia versus State of Bihar and Another*, 2003 SCC (Cri) 1649 and submits that criminal breach of trust is not made out as the petitioner did not have any mens rea or mental intention to destroy the file and there was no misappropriation or

conversion to personal use or disposal of the property by the petitioner.

3. The charge sheet discloses that the petitioner is an employee of DSIDC and was posted as Assistant Manager at Narela Allotment Cell. File No. 962 of DSIDC was under the control of the petitioner. The said file related to plot No. 962, DSIDC, Narela, Delhi. As per the investigation made by the police, the original allottee of the said plot Hari Shankar Bansal did not get the lease deed executed in his name and had not signed the lease deed. He had sold and transferred the plot to a third party. As it was a case of a third party transfer, where the original allottee had failed to get the lease deed executed on or before 19th October, 2005, payment of Rs.14,08,620/- to DSIDC was required to be made for regularization in the present case. As per the charge sheet, in file No. 962 the aforesaid facts of transfer of the plot by the original allottee Hari Shankar Bansal was not mentioned and this fact was concealed. Payment of Rs.14,08,620/- was not made to DSIDC. It is apparent from the charge sheet that the allegation is that file no. 962 was processed as if the original allottee Hari Shankar Bansal had not sold or transferred the property to any third party.

4. It is stated in the charge sheet that the petitioner made a written complaint to the Managing Director of DSIDC that on 5th December, 2005 at 3.30 p.m., that the co-accused Rajinder Singh Datoniya had asked the petitioner to bring the said file no. 962 from Narela office to the office of SDM, Narela. The petitioner claims that he took the file and met Ashok Kumar Gupta, a property dealer outside the office of SDM, Narela, but Rajinder Kumar Datoniya was not present there. Ashok Kumar Gupta took the petitioner to a secluded place where Rajinder Kumar Datoniya was sitting in his car. Rajinder Kumar Datoniya took the file and took out papers, inspite of resistance by the petitioner. Rajinder Kumar Datoniya had shown a revolver/pistol to the petitioner.

5. Learned counsel for the petitioner has placed heavy reliance on the

complaint by the petitioner and submits that the ball started rolling thereafter. This is only one aspect of the matter. Whether the complaint is correct or not and whether any revolver/pistol was shown by Rajinder Kumar Datoniya is a matter, which will be gone into and examined at the trial. As per the allegation in the charge sheet, file No. 962 is missing and is not traceable. The said file is a property of DSIDC. The petitioner was in possession and in dominion and control over the said file. As per his own complaint, the petitioner had taken out the said file from the office of the DSIDC and had taken it outside the office of the SDM, Narela and thereafter the file became untraceable/missing. The allegation of the prosecution is that taking out of the file and subsequent destruction was result of conspiracy between the petitioner and Rajinder Kumar Datoniya. It may be noted that Rajinder Kumar Datoniya is not a superior officer to whom the petitioner was reporting and whose instructions the petitioner was required to follow. Even otherwise as per the complaint of the petitioner himself, he was asked to meet a property dealer Ashok Kumar Gupta.

6. As far as framing of charge is concerned this court in *State v Mehrunisa* CRL.REV.P. 428/2008 decided vide order dated 10th September, 2010 it has been observed as under:

“17. On the point of charge, scrutiny of allegations and evidence relied upon by the prosecution is made to decide whether there are sufficient grounds to proceed against the accused. The object is not to decide the case on merits after evaluating the possible defense and make judgmental assessment of the prosecution evidence; but to decide whether there are sufficient grounds for the court to proceed with the trial or not. Probative value of the material is not gone into in depth. Materials brought on record by the prosecution have to be accepted as true at this stage. The material is evaluated on the face value to decide whether it discloses existence of all ingredients constituting the alleged offence. At this stage even a strong suspicion founded on material which leads the court to form presumptive opinion

on existence of factual ingredients constituting the offence alleged would justify framing of charge. If the evidence which the prosecution proposes to adduce even if fully accepted, before it is challenged in cross examination or rebutted by defense evidence, does not show that the alleged offence was committed then there is no sufficient ground for proceeding with the trial. The accused is entitled to discharge.....”

7. The contention of the petitioner is that he was shown a pistol. Learned APP has pointed out that this is a mere allegation. There is no eye witness except the statement made by the petitioner, who is a co-accused. It is alleged that this is self serving statement. Rajinder Kumar Datoniya has not challenged the framing of charges under Section 392/397/34 IPC against him.

8. Judgment in the case of *Kailash Kumar Sanwatia* (supra) does not help the contention raised by the petitioner. The file No. 962 was under the control and possession the petitioner. He had the custody of the said file, which belonged to and was property of DSIDC. The petitioner was entrusted with the said file but had taken the file outside the office. The file was thereafter destroyed and has gone missing. It may be appropriate in this regard to refer to the decision of the Supreme Court in *Mustafikhan v. State of Maharashtra*, (2007) 1 SCC 623, where in it is observed as under:

“9. In order to sustain a conviction under Section 409 IPC the prosecution is required to prove that (a) the accused, a public servant was entrusted with property of which he was duty-bound to account for, and (b) the accused had misappropriated the property.

10. Where the entrustment is admitted by the accused, it is for him to discharge the burden that the entrustment has been carried out as accepted and the obligation has been discharged.

11. The above position was reiterated in *Jagat Narayan Jha v. State of Bihar*, 1995 Supp (4) SCC 518.

12. It is not necessary or possible in every case to prove as to in what precise manner the accused had dealt with or appropriated the goods. In a case of criminal breach of trust, the failure to account for the money, proved to have been received by the accused or giving a false account of its use is generally considered to be a strong circumstance against the accused. Although onus lies on the prosecution to prove the charge against the accused, yet where the entrustment is proved or admitted it would be difficult for the prosecution to prove the actual mode and manner of misappropriation and in such a case the prosecution would have to rely largely on the truth or falsity of the explanation given by the accused. In the instant case, there is no dispute about the entrustment.”

9. In view of the above, I do not find any merit in the present petition and the same is dismissed.

10. It is clarified that the observations made in this order are for the purpose of disposal of the present petition and will not be construed as observations on merits binding on the trial court.

SANJIV KHANNA, J.

**OCTOBER 06, 2010
VKR/J**