

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

+ **Crl. Rev. P. 331/2009 & Crl. M.A. No. 6171/2009 (Stay)**

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Reserved on: 24th November, 2011

Decided on: 29th November, 2011

AMIT PRATAP & ANR.

..... Petitioners

Through: Mr. Sheikh Israr Ahmed, Advocate.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for the State
with Inspector Shiv Dayal.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Petitioners impugn the order dated 16th April, 2009 passed by the learned Additional Sessions Judge modifying the charge against the Petitioners to one for offence under Sections 364A IPC and 120B IPC instead of Sections 115/118 read with 34 IPC. The learned Trial Court vide the impugned order noted that the charge under Sections 115/118 read with Section 34 IPC as framed against the Petitioner on 4th April, 2005 had become final as the said order was not challenged. Even during arguments before the learned Trial Court it was conceded by the learned counsels for the Petitioners that under Section 216 Cr.P.C. the Court can amend the charge however, no order on discharge can be passed. Thus it has to be decided whether the Petitioners should continue for charges under Sections 364A IPC and 120B IPC or under Sections 115/118 IPC read with 34 IPC or be discharged.

2. In nutshell the case of the prosecution is that a complaint was lodged by Vimal Chadha at police station Ashok Vihar that his 20 years old son Prakh Chadha @ Sunny, who had gone out with his friends on 18th January, 2003, had not returned and was missing. Subsequent to the registration of the FIR No. 34/2003, a ransom call was received on 19th January, 2003. Since the family and the police suspected accused Vikas Chaudhary for having committed the offence, his landline phone number and mobile number were put under interception after seeking requisite permission. The ransom calls continued and last of the ransom calls made to the Complainant was on 11th March, 2003 by Vikas Chaudhary even though the Complainant's son Prakh Chadha had been murdered on 18th January, 2003 itself.

3. The role assigned to the Petitioners is that they allegedly joined the conspiracy later on and participated in demanding the ransom as they were also promised a share in the ransom amount. The Petitioners and the other co-accused were arrested on 4th May, 2003. A charge sheet was filed against all the five accused persons for committing the offences punishable under Sections 364/302/201 read with Section 120B IPC. Initially vide order dated 4th April, 2005 charges under Sections 364A/302/201/120B IPC were framed against the co-accused Vikas Sidhu, Vikas Chaudhary and Joginder, whereas against the Petitioners charges for commission of offences punishable under Sections 115/118/34 IPC were framed.

4. The co-accused Vikas Chaudhary filed an application claiming that he was a juvenile on the date of commission of offence, that is, 18th January, 2003 and thus his inquiry be separated and sent to the Juvenile Justice board. The said application was dismissed by the learned Additional Sessions Judge

however, in a challenge before the High Court the matter was remanded back for re-hearing. Even on re-hearing the application was dismissed. On a subsequent petition filed before the High Court the co-accused Vikas Chaudhary was declared a juvenile and subsequently granted bail by the Juvenile Justice Board. The Complainant challenged the said order before the Hon'ble Supreme Court which set aside the order of the High Court and remanded it back to reconsider the matter taking into account the fact that offence under Section 364A IPC was a continuing offence. When the matter was heard by this Court vide order dated 13th March, 2009, it dismissed the contention of the co-accused Vikas Chaudhary and held that he was not a juvenile since the offence was a continuing one and it held that as per the prosecution version the making of ransom calls on 19th January, 2003 and 10th and 11th March, 2003 even after murdering the deceased on 18th January, 2003 would clearly constitute the offence under Section 364A IPC and the contention that the said calls would at best constitute an offence of cheating was rejected. This Court further held that the error in not framing the charge by mentioning the ransom calls made on 19th January, 10th and 11th March, 2003 is a curable omission which in terms of the judgment of the Hon'ble Supreme Court should be corrected. It was thus directed that the learned Trial Court would correct the charge. It is in view of this order by this Court dated 13th March, 2009 the charge against the Petitioners was amended to one for offence under Section 364A IPC and 120B IPC instead of 115/118 read with 34 IPC.

5. The issue that arises in the present petition is whether merely on the disclosure statement of the co-accused and the Petitioners can they be charged for offences under Section 364 IPC read with 120B IPC. It may be

noted that the case of the prosecution is that Vikas Chaudhary, Vikas Sidhu and Joginder were arrested in the above case. Vikas Chaudhary and Vikas Sidhu disclosed that after kidnapping and killing of Prakh Chadha they had made ransom calls to his father Vimal Chadha, as co-accused Joginder fell ill they joined the present Petitioners in their planning to receive the ransom money from the father of the deceased Vimal Chadha. As they thought that they both would not be in a position to collect the huge amount of Rs. 35 lakhs of ransom money from Shri Vimal Chadha. Vikas Chaudhary who was a friend of Yogesh, Petitioner No. 2 herein narrated the whole incident to him and asked for his help in collecting/receiving the ransom amount. Petitioner No. 2 Yogesh Rawat in turn discussed the matter with the Petitioner No. 1 Amit Pratap and sought his help in the matter. Petitioner No.1 Amit Pratap a resident of trans Yamuna area offered to join them. Vikas Chaudhary and Vikas Sidhu assured them an amount of Rs. 2-3 lakhs each for this help. The Petitioners agreed to help them in collecting/receiving the ransom amount. Petitioner No. 1 suggested some location in the area of trans Yamuna, Delhi for the receipt of the ransom amount. Further the Petitioner No. 1 also took Vikas Sidhu and Vikas Chaudhary to various PCOs for making ransom calls to the father of the deceased, though he did not make any call personally to the complainant Shri Vimal Chadha. Admittedly the only evidence against the Petitioners is their their confession and the confession of the co-accused made before police officer. The concessions of the Petitioners Ex.PW19/E and Ex.PW19/F have led to no discovery of fact. There is neither any intercepted conversation which implicates the Petitioners nor any eye witness to the incident, nor any other circumstantial evidence.

6. Merely on the basis of disclosure statements of the co-accused and the Petitioners before the police which are inadmissible in evidence, I find that no charge under Section 364A/120B IPC is made out against the Petitioner. The law is well settled that the confession of an accused before the police officer or in police custody is inadmissible as held in *Aghnoo Nagesia vs. State of Bihar*, AIR 1966 SC 199 and *Khatri Hemraj Amulakh vs. State of Gujarat*, AIR 1972 SC 922.

7. It may be noted that the Petitioners were earlier charged for offence under Section 115/118/34 IPC though no revision was filed against the said charge and the learned Trial Court has held that the order has become final, however, the said charge was also framed on the basis of the disclosure statement of the co-accused and the Petitioners which are inadmissible in evidence. While exercising revisional jurisdiction this Court will not perpetuate illegality by directing that the Petitioners be tried for offence under Sections 115/118/34 IPC. Thus in view of the peculiar facts and circumstances of the case the Petitioners are discharged not only for the offences under Section 364A/120B IPC but also under Section 115/118/34 IPC.

Petition and application are disposed of.

Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

NOVEMBER 29, 2011

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