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

+ CRL.REV.P. 388/2010

STATE

..... Petitioner

Through: Mukesh Gupta, APP.

versus

SANJAY THAPA & ANR.

..... Respondents

Through: Mr. A.J. Bhambhani and Ms. Nisha
Bhambhani, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

17.11.2011

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1. By the present petition the Petitioner State seeks setting aside of order dated 30th April, 2010 passed by learned Additional Sessions Judge whereby the charges under Sections 395/397/412 IPC were dropped against the Respondents/accused.

2. Learned APP for the State contends that on 28th October, 2010 Sukhdeep Singh lodged a report that on the previous date at about 8.30 p.m. he along with his family members boarded a train. At about 2.00 a.m. three-four boys aged about 20-25 years boarded the train who after closing the shutter of the coach and by showing knives looted them. It is contended that the impugned order of the Learned Additional Sessions Judge is manifestly

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wrong as the ingredient to attract the provision of Section 397 IPC that is the use of deadly weapon is clearly made out in the present case. All the witnesses have stated that the accused persons while committing the offence used knives. Further it is stated that the accused persons in their disclosure statement have stated there were other associates also at the time of commission of the crime, therefore, charge under Section 395/397/412 IPC was rightly invoked by the prosecution.

3. Per contra, learned counsel for Respondent/accused contends that there is no illegality in the impugned order as the learned Additional Sessions judge has correctly observed that the complainant has only implicated 3-4 persons and for constituting an offence of dacoity the requirement is of five or more people. The amendment of charge to one for offences under Sections 395/397/412 IPC is not warranted. Thus, the present petition has no merit and is liable to be dismissed.

4. I have heard learned counsel for the parties and perused the record.

5. Briefly the prosecution case is that on 28th January, 2010 the complainant Sukhdeep Singh lodged a report that on the previous date at about 8:30 pm he along with his family members boarded Himachal Queen Express train for coming from Kalkaji to Nizamuddin Station. On the night of 28th January, 2010 at about 2.00 a.m. when train reached New Delhi

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Railway Station and started from there, 3-4 boys aged 20 to 25 years boarded the train. One of the boy had black scar below his eye. As soon as the train started those boys closed the shutter, showed knives (chaku nikal liye) and started looting them. He gave the details of gold ornaments, Mobile Phone, Cash, Watch, driving licence and PAN cards looted from his family members. Certain other passengers of the train were also deprived of their mobile phones and cash by those boys. After five minutes when the train slowed down those boys got down and ran away. He could identify those boys. Four persons were apprehended on 1st February, 2010. Charge sheet was filed under Sections 395/397/412 IPC and the case was committed to the Court of learned Additional Sessions Judge.

6. A perusal of the statement of the witnesses recorded during investigation reveals that the witnesses have named only three-four boys to have entered the train from the front gate and looting the people by showing knives. The necessary ingredients for offence punishable under Section 395 IPC are that it should be committed by five or more persons conjointly. Thus no charge under Section 395 IPC could be made out as rightly held by the learned Additional Sessions Judge.

7. However, for an offence punishable under Section 397 IPC, the prosecution must establish:- i) commission of robbery or dacoity; ii) that the

accused used the deadly weapon; or caused grievous hurt; or attempted to cause death or grievous hurt and iii) the above acts were done during the commission of robbery or dacoity. These ingredients have been duly established in the present case as witnesses have stated that the boys looted after taking out knives (chaku nikal liye). Thus, the provisions of Section 397 IPC are attracted.

8. As regards offence under Section 412 IPC, it may be noted that from the accused mobile phone, credit card and jewellery items have been recovered and thus a charge under Section 411 IPC is required to be framed. Since on the facts of the case charge for offence under Section 397 IPC is also made out against all the accused besides the offences charged the impugned order dated 30th April, 2010 passed by the learned Additional Sessions Judge is modified to this extent. The prosecution for an offence under Section 397 IPC is triable by the Court of Sessions. Pursuant to the impugned order the matter was transferred to learned Metropolitan Magistrate. The learned Metropolitan Magistrate is thus directed to send back the file to the Court of Sessions for being tried. The learned Additional Sessions Judge will accordingly amend the charge and proceed in accordance with law.

Petition stands disposed of. Order dasti.

Trial Court record be sent back forthwith along with a copy of the
order.

NOVEMBER 17th, 2011
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MUKTA GUPTA, J.