

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

+ CRL.REV.P. 241/2008 & Crl. M.A. No. 5134/2008 (Stay)

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Reserved on: 10th February, 2012

Decided on: 14th March, 2012

JITENDER SINGH @ MOTU & ORS

..... Petitioners

Through: Ms. Aasha Tiwari, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Gupta, APP for the State.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the petitioners impugn the order dated 8th April, 2008 whereby the learned Metropolitan Magistrate directed framing of charges under Sections 394/506/323/341/34 IPC and the order dated 8th April, 2008 framing charge for the said offences.

2. Learned counsel for the Petitioners contends that on the statement of Sanjay Kumar, FIR under Section 394/506 IPC was registered as he alleged that Kaku, Billo, Motu and Meena beat him with fist blows and kicks, Billo snatched his chain and Motu snatched his purse from his shirt pocket. As per the MLC collected, the injuries on the complainant were opined to be simple blunt. Thus, Sections 341/323 IPC were also added. However, during investigation supplementary statement of Sanjay Kumar was recorded wherein he stated that today his friend Ravinder Vasudev came to his house and gave him one black colour purse containing Rs. 3,000/-, some visiting

cards, his license and his gold chain which he recognized. Thus his earlier statement was incorrect. When he was beaten, he felt dizzy and on checking he found his wallet and chain missing, thus, he thought that the same has been taken away by the Petitioners while they had fallen down during the scuffle. Statement of Ravinder Vasudev was also recorded, who stated that on 19th November, 1995 he had gone to Inderpuri to meet his friend. At about 9.30 in the morning when he reached at Aggarwal Sweets, he saw a black purse and gold chain lying on the ground. On examining the purse he found a driving license, Rs. 3,000/- and some visiting cards. Since the driving license belonged to the person he knew as Sanjay, he has given the articles to him. He could not return these things earlier as he had to go for an important task and he had no time. In view of this supplementary statement of the complainant and the statement of Ravinder Vasudev, the Investigating Officer filed a charge sheet against Petitioner No.4 only for offence under Sections 341/323 IPC. The learned Trial Court took cognizance for offences under Sections 394/506 IPC and summoned Petitioner No.4. However, subsequently vide order dated 9th January, 2002, the learned Trial Court summoned all the Petitioners despite Petitioners No. 1 to 3 were not charge-sheeted to face trial as the learned Trial Court was of the view that according to the statement of complainant, a clear case of robbery as punishable under Sections 323/394/397 along with Section 506(II) IPC is made out. Aggrieved by that order, the Petitioners filed a petition before this Court for setting aside of the order dated 9th January, 2002 which was dismissed by this Court. After hearing the arguments on charge, the learned Trial Court directed framing of charges under Sections 323/341/506 /394/34 IPC and thus charge was framed against the Petitioners on 8th April, 2008.

3. Learned counsel for the Petitioners contends that in view of the supplementary statement of the complainant that since he was feeling dizzy he could not make out whether the purse and the chain had been snatched from him and the same were found by another witness lying on the road who returned the same to the complainant, no case for framing of charge against the petitioners for offences under Sections 394/34 IPC was made out. The learned Trial Court failed to apply the law laid down by the Hon'ble Supreme Court in *Union of India vs. Prafulla Kumar Samal*, AIR 1979 SC 366 wherein it was directed that the Court has to sift the evidence to determine whether a case for trial exists on the basis of material. According to the learned counsel, no case for charge under Section 506 IPC or Sections 323/34 IPC is made out and thus the order on charge be set aside.

4. Learned APP for the State on the other hand contends that in view of the two statements of the Complainant at the stage of charge, the court cannot appreciate the evidence and come to the conclusion as to which statement is correct as this has to be determined at the stage of trial. Since the complainant in the initial statement has stated that the Petitioners in furtherance of their common intention snatched the chain and purse containing Rs. 3,000/-, visiting cards and driving license, a case under Section 394 IPC is clearly made out.

5. I have heard learned counsel for the parties.

6. The abovementioned FIR was registered on the complaint of Sanjay wherein he alleged as under:

“I reside at the abovementioned address and I am a student. Today i.e. on 19.11.95 at about 9 O’clock when I went to buy sweets at Aggarwal Sweets, Main Bazar, Inderpuri, there I met four boys viz, Kaku, Billo, Motu, and Meena whom I knew before as they belong to Inderpuri. They began to give me fist blows and kicks in side the shop and Billo snatched the chain from my neck. On account of the blows received by me, I received injuries on my face. Motu snatched my black purse from my shirt pocket. The said purse contained my Driving Licence, some visiting cards and Rs. 3,000/-. I began to shout, upon which Billo said we left you earlier but now we will not leave you and he threatened to kill me and pointed a country made pistol at me. Somehow, I managed to escape from there and reached my car which was being driven by my uncle Rajeev Pandey. I reached home. The abovementioned boys have caused injury to me and they have snatched my gold chain and purse. Legal action be taken against them. Sd/- Sanjay.”

7. Thus on the statement of the complainant a case FIR No. 265/1995 under Section 394/506 IPC was registered. During investigation, site plan was prepared and the complainant was medically examined. The injuries were opined to be simple blunt in nature. In the supplementary statement recorded on 15th December, 1995, the complainant stated as under:

“I state that I live at the above address and today on 15.12.95 my friend Shri Ravinder Vasudev S/o Shyamlal Vasudev r/o 91/13C, Shaheed Chand Marg, Uttam Nagar, Delhi, came to my house at EC-4, Inderpuri and give me a black purse, in which there was Rs. 3,000/- some visiting cards and driving license and a gold chain, after I identified the same. On 19.11.95 after I was beaten at Aggarwal Sweets Shop, I had fainted. Later, when I checked both these items were not found with me. May be they had fallen at the time of the fight. Now my friend Ravinder Vasudev has returned the same to me. I have read the statement. It is correct.”

8. Further the statement of Ravinder Vasudev was recorded who stated as under:

“I state that I reside at the above address and I am a Lawyer. On 19.11.95, I had gone to Inderpuri to meet a friend. At about 9.30 in the morning when I reached Aggarwal Sweets Shop I saw a black purse and a gold chain on the ground. On examining the purse I found a Driving License, Rs. 3,000/- and some visiting cards. The Driving License belonged to a person known to me by the name of Sanjay on 19.11.95. I was going for an important task, hence I had no time. Hence I kept the purse and chain with me, to be returned later. Today, I have found the time to return the same and I have returned the visiting cards and Driving License to Sanjay. I have heard my statement, it is correct.”

9. From the perusal of the statement of the complainant and the investigation conducted, it is apparent that the complainant stated that his gold chain and black purse had been snatched during the scuffle since he found the same missing after the scuffle. This is not a case where there are two separate statements of the complainant which would require appreciation as to which one is correct. The second statement is a sequel of the first statement coupled with the recovery of the gold chain and the black purse with the driving license. In no way the recovery of the driving license of the complainant could have been a false or planted one. Thus the learned Trial Court failed to sift the evidence collected during the investigation and erred in framing the charge for offence under Section 394 IPC against the Petitioners. Further the charges for offences under Sections 341/323/506 IPC are clearly made out against the Petitioners from the statement of the complainant.

10. In view of the aforesaid discussion, the impugned order to the extent it directs framing of charge under Sections 394/34 IPC against the Petitioners is set aside.

11. Petition and application are disposed of accordingly. Trial Court Record be sent back forthwith.

(MUKTA GUPTA)
JUDGE

MARCH 14, 2012
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