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

% *Date of Decision: December 10, 2013*

+ **CRL.A. 128/2005**

YASHPAL Appellant

Through: Ms.Ruchi Kapoor, Advocate

versus

STATE Respondent

Through: Mr.Firoz Khan Ghazi, Advocate for State

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (Oral)

1. Present appeal has been preferred under Section 374 Cr.P.C. against the judgment dated 29.1.2005 and order on sentence dated 31.1.2005, by which the appellant, Yashpal was convicted and sentenced to pay fine of Rs.500/- under Section 186 IPC, in default thereof to undergo RI for 15 days; and to undergo RI for one year and pay fine of Rs.1000/- in default of payment of fine to undergo RI for one month under Section 307 IPC. The appellant, Yashpal, was also sentenced to undergo one year RI under Section 27 of the Arms Act.
2. Counsel for the appellant submits that the impugned order is contrary to facts, is against the law and has been passed without application of judicial mind and in haste. It is contended that the order suffers from surmises and conjectures and the prosecution has not been able to prove its case beyond reasonable doubt, which is the basic principle of criminal jurisprudence. Counsel further contends that the appellant has been implicated in the false and frivolous case, there is no incriminating

evidence against him and his conviction is only based on the testimonies of police officials, and thus liable to be set aside.

3. Counsel for the appellant submits that since no complaint was made in writing either by the police official or by any person, who is senior to him in terms of provisions of Section 195 Cr.P.C. and, thus, the appellant could not have been convicted under Section 186 I.P.C. It is further contended that the appellant has been erroneously convicted under Sections 307/34 IPC as there is no evidence on record to show that there was meeting of minds or common intention on the part of the appellant with Krishan (since deceased), to fire at the police party.
4. It is further contended that even otherwise the prosecution has not been able to connect the pistol (*Desi Katta*) with the appellant which is sought to have been recovered from the appellant. Another contention which has been raised is that there is no evidence on record to show that the appellant had either fired at the police party or had made any attempt to fire at the police party. In the absence thereof, no case under Sections 307/34 IPC is made out against the appellant.
5. Per contra, Mr.Ghazi, counsel for the State, submits that a complete reading of the testimonies of PW-2, PW-5 and PW-8 leave no room for doubt that the appellant was going to use the fire arm and thus he has been rightly convicted under Section 307 IPC and section 27 of the Arms Act.
6. Before the rival submissions of the parties are considered, it would be useful to extract the case of the prosecution, as noticed by the trial court:

“The case of the prosecution as set out in the charge sheet is as follows. During the investigation of a case FIR No.35 of 1996 registered at P.S. Narela under Sections 394/307/364A/341/506/507/511/384/120-B IPC and 27/54/59 Arms Act. The complainant in that case Inder Mohan Chopra had complained that he had been asked to pay a ransom of Rs.5 lac by

those responsible for attempted kidnapping and looting etcetera and that he was being threatened on telephone no.7281408. Therefore, the said telephone was kept under observation. It was found during the surveillance that most calls were emanating from telephone no.5477756 which was in the name of Umesh Kumar Ghai, Kiran Dass, Charitable Hospital, Jaunti, Delhi.

2. On 29.3.96 at about 11:57 a.m. Inder Mohan Chopra received one call from telephone no.5477756 at his telephone no.7271408. Caller identified himself as Krishan and stated to Inder Mohan Chopra that the following day also in that evening telephone call would be made and by then a sum of Rs.1 lac should be kept ready and after that call, only action would be taken. Inder Mohan Chopra was warned that since he was aware about the activities of the caller and had already sustained bullet injuries, he should not take chances and should make arrangement for the payment. Therefore, a police party was organized under SI Narender Singh along with S.I Satpal Singh, ASI Jaivir Singh, Ct. Ram Niwas and Ct. Shiv Kumar.

3. Then police party reached Kiran Dass Charitable Hospital, village Jaunti in a private maruti car which was also fixed with a wireless set. A second party was organized under the charge of Inspector Subhash Tondon, HC Hans Raj, HC Ramesh Kumar, HC Rishikesh, Ct. Surender, Ct. Mohan Lal who proceeded in Government vehicle DL 1L 7921 towards Hanuman Mandir which was then under construction at Jaunti. The police party hid themselves and at about 7.50 pm HC Ramesh Kumar stationed at the telephone exchange informed that a call was being received at telephone no.7271408 from telephone no.5477756. SI Narender Singh signalled Ct. Shiv Kumar, Ct Ram Niwas who was stationed near the telephone booth and the area was covered. On a further signal from SI Narender Singh, Ct. Shiv Kumar and Ct. Ram Niwas entered the telephone booth and apprehended a person who was speaking on the telephone and who had come to the spot in maruti car no.DL 2CE 5161 of white colour with darkened glasses.

4. This person turned out to be Rajesh, son of Balbir Singh. He was also found to be armed. During interrogation he revealed that two of his accomplices namely Krishan and Yashpal were present near DTC Deot, Kanjhawala, Gherva Road in another maruti car bearing No.HNH 3309 of brown colour and were waiting for him.

On receipt of this information SI Narender Singh alongwith SI Satpal Singh, Ct. Ram Niwas and Ct. Shiv Kumar alongwith the said Rajesh proceeded in their car whereas the others including ASI Jaivir Singh, Inspector Subhash Tondon proceeded in the Government Vehicle behind the car. At about 8.30 p.m. on the Kanjhawala- Ghevra Road near DTC Depot, Rajesh pointed out to a parked brown colour maruti car and identified the driver Krishan and the person sitting next to him in the front as Yashpal.

5. Thereupon SI Narender Singh brought his maruti car in front of the brown coloured maruti car to block it. On seeing the police Krishan sitting in the brown coloured maruti car aimed his loaded pistol towards the police but Ct. Shiv Kumar got out of the front left seat of the maruti car and quickly held the hand of Krishan turning it upwards, as a result of which the bullet that Krishan fired went skywards. Ct. Shiv Kumar over powered Krishan. In the meantime, Yashpal tried to fire his loaded pistol but was effectively prevented by doing so by Ct. Ram Niwas who over-powered him. Thus, Yashpal and Krishan were apprehended with coutry-made loaded pistols and one more pistol was recovered from the maruti car at the instance of Krishan alongwith cartridges and the various proceedings were carried out by the police in respect of the recoveries of weapons and ammunition. A case under Section 307 IPC and 25-27/54/59 Arms Act was registered against Krishan and Yashpal and after the completion of investigation, the charge sheet was submitted against Krishan and Yashpal for the offences under Section 307 IPC read with section 34 IPC and 25-27/54/59 Arms Act.

6. The case was committed to the sessions for trial. Both the accused were charged for having committed the offence under Section 307 IPC read with Section 34 IPC. Accused Yashpal was also charged with the offence under Section 27 of the Arms Act and for the offences under Section 186 IPC. Similarly, the accused Krishan Kumar as also charged for the offence under Section 25 Arms Act, 27 Arms Act and 186 IPC. The accused pleaded not guilty to these charges. During trial the accused Krishan Kumar died having been murdered as per reports received. As such the case abated against him.

7. The prosecution has examined 8 witnesses in this case. After which the statement of the accused Yashpal was recorded under

Section 313 Cr.P.C. The accused claimed that he had been falsely implicated in this case and that the police had come to his village alongwith Krishan and had arrested him and had made him signed blank papers though Krishan had not known him. He claimed false implication.”

7. The first contention of counsel for the appellant is that Section 186 of the IPC would not be attracted as there has been no compliance of Section 195 Cr.P.C. Section 186 of the IPC reads as under:

“186. Obstructing public servant in discharge of public functions.-- Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

8. Section 195 (1) (a) (i) and (iii) Cr.P.C. reads as under

“195.....

(I) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) xxxxx

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”

9. Admittedly, in the present case, neither a complaint was made in writing by the concerned police officer nor by any other public servant, to whom the concerned police official was administratively subordinate. In the case of **Gurinder Singh & Anr. Vs. State** reported at 1996 JCC 535,

wherein a similar question had come up for consideration, the court had observed as under:

“5. A bare reading of Section 195, Cr.P.C. would show that for a Court to take cognizance of an offence punishable under Section 186, IPC, the pre-condition is a written complaint to be filed by the public servant. Admittedly, no such written complaint had been filed by Constable Hukam Singh. In the absence of such a complaint, I am in agreement with the contention of Mr. Andley, that the learned Metropolitan Magistrate could not have taken cognizance of the offence punishable under Section 186, IPC. Statement made by Constable Hukam Singh and as recorded under Section 161, Cr.P.C. or for that matter under Section 164, Cr.P.C. cannot and would not constitute a written complaint as required under the provisions of Section 195, Cr.P.C. The contention of Mr. Jolly that the statement of Constable Hukam Singh recorded under Sections 161/164 Cr.P.C. should be treated at par with a written complaint as envisaged under Section 195 Cr.P.C, is without force. Statement under Section 161 or 164 Cr.P.C. cannot be equated as a special complaint in writing stipulated under Section 195 Cr.P.C.

6. Now reverting to the second limb of Mr. Andley's argument that since learned Trial Court could not have taken cognizance under Section 186, IPC in the absence of a written complaint, hence the case as a whole must go. I find force in this submission of Mr. Andley. In similar circumstances, the Madras High Court in the case of *P. Btiraj v. K. Muniyandi*, 1995 Criminal Rulings 219 held that if complainant ignored the provisions of Section 195 Cr.P.C. then the entire complaint must go and Court cannot take cognizance. In that eventuality the proceedings as a whole has to be quashed. In *P. Btiraj's case* complaint was filed consisting of two offences under Sections 166 & 186, IPC. In the absence of a written complaint the Court opined that proceedings as a whole are liable to be quashed. Reference can also be made to the decision of Punjab & Haryana High Court in the case of *Bhagat Ram v. State of Punjab*, 1991 (1) Cr.L.J. 246, where it has been observed that jurisdiction of the Court to take cognizance of an offence under Section 186, IPC, is barred except on a complaint in writing of the public officer concerned. Simple lodging of FIR at the Police Station which resulted in the prosecution of petitioner ultimately and framing of charge for the offences would not amount to filing

of complaint in writing by public servant as stipulated under Section 195 Cr.P.C. are liable to be quashed. To the same extent are the observations of Madhya Pradesh High Court in the case of *Ashokv. The State*, 1987 Cr.L.J. 1750 where the Court after analysing various provisions of the Code and in particular Sections 195 and 461 (k) held that the trial for the offences under Sections 186/353, IPC, without a special complaint as required under Section 195(1)(a)(i) of Cr.P.C. is illegal. When Magistrate acts in contravention of bar under Section 195, Cr.P.C. the proceedings deserve to be quashed. Relying on these judgements Mr. Andley contended and to my mind, rightly so that since the pre-condition and mandatory requirement of a written complaint is missing in this case, therefore, the Trial Court could not have taken cognizance of the offences punishable under Sections 186 & 353, IPC. Such cognizance under Section 186 could not have been taken then the FIR as a whole must be quashed.”

10. Applying the law discussed above, in the absence of any complaint in writing by the police officer or a public servant, to whom the concerned police official was a subordinate, the court could not have taken cognizance of the offence under Section 186 of the IPC.
11. PW-2 has given a vivid description of the incident which took place on 30.3.1996. As per the testimony of PW-2, both the police teams along with Rajesh went to Gheero Road in their respective vehicles. At about 8:30 pm SI Narender Singh brought his maruti car and stopped it in front of a biscuit coloured Maruti car to block it, and he was informed by Rajesh that Krishan was sitting on the driver seat of the biscuit coloured maruti car and Yashpal was sitting on the seat next to the driver seat and both were having loaded pistols with them. This witness has testified that since SI Narender stopped his car, Krishan Kumar, whom he had identified in Court, took a loaded pistol and aimed at his vehicle. PW-2 immediately got down and caught hold of the hand of Krishan Kumar and lifted it and when Krishan Kumar fired with his pistol the shot went in the air. Krishan Kumar was apprehended by him and constable Ram Niwas

(PW-5) apprehended Yashpal, while Yashpal was trying to fire from his loaded pistol.

12. PW-5 in his testimony has also testified that when the police party reached the spot at 8:30 pm at the instance of Rajesh, Krishan was sitting on the driver seat of the car and the appellant Yashpal was sitting by his side. Rajesh pointed out towards them who were having loaded katta in their hand. In the meantime, Krishan fired but was apprehended by PW-2 and the appellant Yashpal was overpowered by him (PW-5). PW-8 has also testified on the same lines. PW-8 has testified that Yashpal was armed with a loaded Desi Katta and he had also tried to fire but he could not fire as he was overpowered by PW-5.
13. The testimonies of PW-2, PW-5 and PW-8 are consistent and trustworthy, however, PW-5, constable Ram Niwas has not testified that the appellant was attempting to use the *Desi Katta*. PW-5 has merely stated that when the appellant was overpowered he had a Desi Katta in his hand. In my view, testimonies of PW-2 and PW-8, on the point of use of *Desi Katta* by the appellant, Yashpal are slightly exaggerated as admittedly the entire operation took place within a flash of a second and the person who could have testified whether Yashpal was attempting to use the Katta or not would be PW-5, who would be nearest to Yashpal, as he is the one who over-powered him. Thus, it cannot be said that Yashpal had any intention of using the *Desi Katta* on the police party, although the *Desi Katta* was recovered from him, which is evident from the testimonies of PW-2, PW-5 and Pw-8.
14. The only question which is left for consideration is whether there was any intention on the part of Krishan (since deceased) and Yashpal to fire at the police party. The facts of the case as they unfold would show that Rajesh was apprehended from a telephone booth and on his disclosure the police

party conducted the raid and proceeded towards the place of occurrence. Neither Krishan (since deceased) nor Yashpal had any idea that they would be intercepted by the police or police party had apprehended Rajesh which is evident from the fact that in case they had any such knowledge they would have fled from the spot and would not have waited at the place of occurrence for Rajesh to reach along with the police party. There is no evidence on record to suggest that either prior to the incident or at the time of the incident there was any meeting of minds between the appellant and Krishan to attack the Police party by *Desi Katta*. Thus in my view no case is made out against the appellant under Section 307/34. Accordingly, the appellant is acquitted under Section 186 as also under section 307 IPC, however, his conviction with regard to section 27 of the Arms Act shall be maintained.

15. Counsel for the appellant submits that the appellant has already undergone more than 2 months and 12 days; his conduct in jail is satisfactory and he has not been convicted of any other offence in the past. Considering the fact that the appellant has already undergone more than two months, his conduct in jail has been satisfactory and he has not been convicted of any other offence in the past, it is deemed appropriate to modify the sentence under Section 27 of the Arms Act to the period already undergone.
16. Appeal stands disposed of, in above terms. Bail bonds of the appellant shall be cancelled and surety stands discharged.

G.S.SISTANI, J

DECEMBER 10, 2013

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