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

% *Date of Judgment:21.01.2014.*

\+ CRL.REV. PET. 3/2013

STATE ..... Petitioner

Through Mr.Varun Goswami, APP along with SI Vipin Kumar.

versus

PAPPU KUMAR ..... Respondent

Through Mr. N. Hariharan, Sr. Advocate with Mr. Amit Sharma, Mr. Vaibhav Sharma and Mr. Amit Singh Chauhan, Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The State is aggrieved by the impugned order dated 30.05.2012 wherein the respondent Pappu Kumar has been discharged.

2 Record shows that the present FIR No.1171/2006 had been registered on the complaint of K.P. Singh; initial complaint which was on the intervening night of 27.12.2006-28.12.2006 which was to the effect that Varun (since deceased) is missing. Thereafter the dead body of Varun was recovered on 04.01.2007. The FIR which had initially been registered under Sections 365/120-B/34 of the IPC was converted to an offence under Section 302 of the IPC in addition to the offences already noted above.

3 Learned counsel for the State is aggrieved by the finding of the Sessions Judge wherein Pappu has been discharged. His submission is that at the stage of framing of charge, it is only a prima-facie view of the case which has to be kept in mind; nitty-gritties and details of the evidence do not have to be examined. Attention has been drawn to the supplementary statement of K.P. Singh which had been recorded on 11.01.2007. It is pointed out that this statement of K.P. Singh (the father of the deceased) was his 3rd statement; attention also having been brought to his earlier two statements dated 27.12.2006 and 30.12.2006 recorded by the Investigating Officer. It is pointed out that in this 3rd statement complainant has clearly stated that there were enimical terms between Pappu and K.P. Singh and so much so that Pappu had threatened K.P. Singh with dire consequences not only qua himself but also his family members. Submission of the learned counsel for the State being that this spells out the motive for the crime. In this statement, it had also been noted that since Pappu (living in the neighbourhood) had objected to the privatization of electricity which had been ordered by the Government at that time, this had been the bone of contention between the parties and so much so that an FIR No. 508/2003 had been registered

under Sections 386/506/34 of the IPC against Pappu at the behest of the complainant. Attention has also been drawn to the statement of Megha Chakravorty who was allegedly sharing a relationship with the co-accused Anil Sirohi. It is stated that her statement recorded on 30.12.2006 also spells out the fact that the parties i.e. all the co-accused were well known to one another. It is pointed out that it has also come on record that withdrawal of a sum of Rs.1 lac had been made by Pappu on 08.11.2006 from his account; this was his share of the bounty to be paid to him for the murder of the victim. It is pointed out that the conspiracy angle appears to be writ large but for the reasons not known, Pappu Kumar had been discharged. The factual matrix of the case has not been appreciated in the correct perspective.

4 These are largely the three submissions which have been made by the learned counsel for the State. Reliance has also been placed upon (2010) 9 SCC 368 *Sajjan Kumar Vs. Central Bureau of Investigation* to substantiate his submission that at the initial stage i.e. at the stage of framing of charge, if a strong suspicion is made out qua the role of a person, it is not a fit case for discharge.

5 Arguments have been refuted by the learned senior counsel

appearing for the respondent. It is pointed out that the impugned order does not suffer from any infirmity, arguments now addressed before this Court have been answered in the impugned order.

6 Record has been perused. The submission of the learned counsel for the State that a sum of Rs.1 lac had been withdrawn by Pappu from his account on 08.11.2006 has been explained. The incident is of 27.12.2006. The withdrawal of this amount which was 1- ½ months prior to the incident and is nothing on record; even in the disclosure statements of any of the accused (although not to be read in evidence) that a sum of Rs.1 lac was paid as a bounty amount to the co-accused prior in time to the actual incident. In fact on a specific query put to the learned counsel for the State on this count as to when the conspiracy has started and whether it was prior in time to 08.11.2006, the learned counsel for the State has not been able to give any satisfactory answer.

7 The statement of Megha Chakravorty only establishes that the co-accused were all known to one another. This is an admitted fact. It is admitted that all the co-accused (those who have been charged) as also Pappu were living in the same neighbourhood.

8 The supplementary statement of K.P. Singh recorded on

11.01.2007 is in fact the main thrust of the argument of the learned counsel for the State. This statement no doubt speaks of a grudge which was there between Pappu and K.P. Singh but this grudge even as per this statement was being nursed by Pappu from the year 2003 as is evident from the date of registration of the said FIR and this related to the privatization of electricity for which Pappu had threatened K.P. Singh and his family. It would however be difficult to imagine that a grudge of this kind even presuming it was there, would have continued for such a long period i.e. for more than three years when it finally culminated in the murder of Varun.

9 Apart from this 3rd statement of K.P.Singh, in his earlier two versions, no role has been attributed to Pappu. In fact in the entire evidence collected by the prosecution, there is nothing which has been brought to the notice of the Court that apart from this 3rd statement which had been noted above, there is any other role qua Pappu.

10 It was pursuant to the disclosure statement of Jai Prakash and Manoj that the dead body of the victim had been recovered. It was in their disclosure statements that the role of Pappu had in fact surfaced. Admittedly no recovery has been effected from Pappu.

11 The sole circumstance which appears to be against Pappu is that he was living in the same neighbourhood and was on hostile terms with the father of the victim which hostility was over an electricity issue and dated back to the year 2003.

12 There is no dispute to the well established proposition that at the time of framing of charge, it is not for the Judge to analyze all the material including the pros and cons, reliability and acceptability of a case which has to be done only at the trial stage. However the face value of the evidence both oral and documentary has to be taken into regard before a strong suspicion is made out to frame a charge. The conscience of the Court must be satisfied that the material on record is sufficient to justify the commission of the offence by the said accused. Presumption cannot take place of suspicion.

13 Viewed in this background, the impugned order suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

JANUARY 21, 2014
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