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

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Date of Decision: 04.03.2015

% **CRL.L.P. 45/2015**

STATE

..... Petitioner

Through: Mr. Rajat Katyal, APP
ASI Jai Parkash, PS SP Badli

versus

SUMIT @ BACHICHI & ANR

..... Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (OPEN COURT)

CRL MA 1334/2015

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CRL.L.P. 45/2015

1. This petition has been preferred to seek leave to appeal against the judgment dated 14.11.2014 passed by Sh. Sanjay Kumar Aggarwal in SC/67/13 arising out of FIR 357/2009, P.S. SP Badli under Section 392/394/397 read with 34 IPC.

2. By the impugned judgment, while convicting two of the four accused, the respondents Sumit and Yogesh have been acquitted. So far as Sumit is concerned, the case of the prosecution was that on the date following the incident, i.e. on 23.12.2009, the complainant went to the police station and he was taken by the police in search of the accused where one police secret informer informed that the person involved could be apprehended from Village Khera Kelan. The accused was apprehended on identification by the complainant. The prosecution claimed that upon search of the accused, one black colour purse was found in the right back side pant pocket containing Rs.150/- and “*one photograph of an old person and documents*”. The memo was prepared at the time of seizure of the purse. The same does not record the identity of the person whose photograph was found. It only states that one photograph of some old person was found. The documents found in the purse have also not been described, apart from stating that “*some documents*” were found.

3. So far as the other accused Yogesh is concerned, his apprehension had also taken place, according to the prosecution, in an identical manner in the presence of the complainant, and upon information received from a secret informer. No recovery was made from him. Finding no evidence against the aforesaid two accused, they have been acquitted by the Trial Court.

4. The submission of learned APP is that in his deposition, the complainant PW-4 had stated that the photograph found in the purse was that of his father. Thus, the purse recovered from the accused Sumit was sought to be the one robbed from the complainant. Pertinently, the complainant accompanied the police and was present at the time of

apprehension of the accused Sumit. It was in his presence that the contents of the purse were searched and recorded in the memo. It is rather curious and seems highly improbable that the complainant would not disclose to the police the identity of the person whose photograph was found in the purse. Only while deposing before the Court, the complainant claimed that the photograph found in the purse (when it was taken out in the Court) was that of his father. Even the documents allegedly found in the purse were not described, nor claimed by the complainant as belonging to him. The complainant did not connect himself with the documents recovered from the purse either at the time of the seizure of the purse, or even in his cross examination.

5. The Trial Court has discussed the case pertaining to Sumit and Yogesh in the following paragraphs of the impugned judgment:

“17. Regarding the other set of accused which consist of accused Sumit and Yogesh, the PW9 Inspector Mukesh Antil who was the IO of this case stated that on 23.12.2009, the PW4 complainant came to the police station and they went in search of other co-accused, but no clue was found. The PW9 Inspector Mukesh Antil along with PW4/complainant Dharmender and his staff went to the place of occurrence where he prepared site plan Ex. PW4/J. Thereafter, the PW9Inspector Mukesh Antil along with PW4 complainant/Dharmender, PW6 Ct. Rajender and PW1 Ct. Mahesh went for the search of co-accused and reached at Mohan Adda, Khera Kalan, Delhi, where one secret informer met the PW9 Inspector Mukesh Antil and informed him that the person involved in the robbery of this case could be apprehended from Village Khera Kalan Delhi, near Baba Nanhe Nath School. The PW9 Inspector Mukesh Antil requested public persons passing from the road, to join the raiding party, but they refused without disclosing their names and address and after giving reasonable excuse. The police party and the

PW4/complainant Dharmender reached near Baba Nanhe Nath School on the pointing out of secret informer and on the identification of PW4 complainant/Dharmender, one boy was caught. The said boy revealed his name as Sumit @ Bachi who was interrogated and arrested vide arrest memo already Ex. PW4/K-1. On the search of accused Sumit @ Bachi, one black colour purse was found in the right back side pant pocket, containing Rs.150/-, one photograph of an old person and some documents. The said documents with above articles were wrapped in a piece of cloth and were converted into pulanda which was sealed with the seal of MA. Seal after use was handed over to PW6 Ct. Rajender. The same was taken into possession vide seizure memo already Ex. PW4/K4. The PW9 conducted the personal search of the accused vide memo already Ex. PW4/K2. The accused Sumit made disclosure statement Ex. PW4/K3. The PW4/complainant Dharmender was relieved. The accused Sumit led the police party to the place of occurrence, near Mazar opposite Gurudwara, Siraspur, Main road, GT road vide pointing out memo Ex. PW9/B. The accused Sumit was taken to police station and he was got medically examined.

18. The PW9 further deposed that on .27.01.2010, the PW4 complainant came to the police station in order to inquire regarding the progress of his case. PW9 Inspector Mukesh Antil along with PW4/complainant Dharmender and PW3 Ct. Naresh reached at Khera Kalan, Delhi, where one secret informer met him and informed him that the person involved in the robbery of this case could be apprehended from Village Khera Kalan Delhi, near railway track. The PW9 Inspector Mukesh Antil requested public persons passing from the road, to join the raiding party, but they refused without disclosing their names and address and after giving reasonable excuse. The Police party reached near railway track, Baba Nanhe Nath School on the pointing out of secret informer and on the identification of PW4/complainant Dharmender, one boy was caught by police party. The said boy revealed his name as Yogesh @ Kalu who was interrogated and arrested vide arrest memo Ex. PW3/A. The PW9 Inspector Mukesh Antil conducted

the personal search of the accused vide memo Ex. PW3/B. The accused Yogesh made disclosure statement Ex. PW3/D. The accused Yogesh led the police party to the place of occurrence, near Mazar opposite GurudWara, Siraspur, Main road, GT road vide pointing out memo Ex. PW3/C. The accused Yogesh was got medically examined and was identified by the PW4 in the court. The PW3 Ct. Naresh Pal & PW6 Ct. Rajender who has accompanied the PW9 also deposed on the similar lines as deposed by PW9 Inspector Mukesh Antil.

19. The PW9 Inspector Mukesh Antil also duly identified the case property i.e. mobile Nokia Express Radio, Black Colour which were recovered from accused Ravinder as Ex. P-1, one black colour wallet/purse having Rs. 150/-, one photograph of old person and two / visiting cards recovered from accused Sumit @ Bachhi in his search from back right side pant pocket, as Ex. P-2 (colly) and an air gun recovered from accused Avinash as Ex. P-3.

20. After perusal of the testimony of the prosecution witnesses, it is clear that PW4 complainant Dharmender had stated in his examination in chief that the accused Sumit snatched his bag and Yogesh was the fourth person with the said three accused. He stated that next day of the incident when he along with his father visited PS, both the accused Avinash and Ravinder were already present and thereafter he failed to divulge anything except the aforesaid role of accused Sumit and Yogesh. It is only upon being cross examined by Ld. APP with the permission of this court that the PW4/complainant Dharmender could prove the arrest memo, personal search memo, disclosure statement and pointing out memo of accused Yogesh and also the arrest memo, personal search memo and disclosure statement of accused Sumit. The recovery memo could also be proved only during cross examination by Ld. APP wherein he termed it to be that from the possession of accused Sumit one black colour purse was recovered from him which was containing Rs.150/-. From the overall circumstances as categorized by PW4, it is clear that it is only upon leading suggestions being put forth by Ld. APP to

PW4/complainant Dharmender that he could support the prosecution story, but not otherwise. He was cogent and clear with respect to his testimony for accused Avinash and Ravinder, but regarding accused Yogesh and Sumit as aforementioned he simply stated that he was not aware about the further proceedings. This is coupled with the fact that the arrest of the accused Yogesh and Sumit also seem to be somewhat fishy as is apparent from the testimony of the IO/ PW9 Inspector Mukesh Antil as discussed here-in-below.

21. The IO/ PW9 Inspector Mukesh Antil deposed before this court that on the next day of the incident i.e. 23.12.09 the complainant came to PS and he went in search of accused with the complainant where one secret informer met the police party and informed them that the person involved in the robbery could be apprehended from village Khera Kalan. Accordingly, the accused Sumit was arrested and interrogated on the pointing out of secret informer and on the identification of the PW4/complainant Dharmender, from whom one black colour purse, containing Rs. 150/- and photograph of an old person was recovered. Contrary to whatever has been deposed by the IO, the PW4/complainant Dharmender in his cross examination by Ld. counsel for accused Yogesh & Sumit could only say in his testimony that two boys who had run from the spot (referring to accused Yogesh and Sumit) were seen by him later on at police station S.P. Badli for the first time. Though he again said that he had seen them near school at village Khera Kalan and again deposed that he had seen those boys at the time of incident for the first time. In his examination-in- chief (as already said), he failed to mention anything regarding the arrest of the accused Yogesh and Sumit on the basis of information given by the secret informer.

22. Same is the case with accused Yogesh. Though he was referred to in the examination-in-chief that he was present at the time of incident, but his arrest etc. and other proceedings could be divulged by the PW4/complainant Dharmender only upon being cross examined by the Ld. APP. The IO/PW9 Inspector Mukesh Antil deposed that on 27.01.10, the

complainant came to police station and he again went to Khera Kalan village where again the secret informer met them and the accused Yogesh was arrested only on the basis of the secret information. No recovery has been effected from accused Yogesh.

23. It is very surprising that during investigation on both occasions i.e. on 23.12.09 & 27.01.2010 when the complainant himself went to police station twice, the police party went to village Khera Kalan and accused Sumit and Yogesh were arrested on the basis of secret information that is claimed to have been given to the IO by the secret informer. The story cited by the police regarding the arrest of accused Yogesh and Sumit appears to be funny and indigestible and is exhibiting the very manipulation by the police regarding the arrest of accused Yogesh and Sumit. The PW4/complainant Dharmender also appears to be tutored for deposing against the accused Yogesh and Sumit in view of the given circumstances as deposed by IO/ PW9 Inspector Mukesh Antil for the arrest of accused Yogesh and Sumit. No public witness has been joined either during the arrest of accused Yogesh and Sumit during the recovery of the articles from the accused Sumit. The delay in arrest of accused Yogesh also could not be explained as he was arrested only on 27.01.2010 and that too when the complainant went to police station to inquire about the progress of his case. The most surprising fact is that whenever the complainant visited the police station to inquire about the progress of his case, police came into action and arrested the accused on the very said day of visit of complainant by visiting a particular village and that too on the basis of secret information.

24. In these circumstances, accused Yogesh and Sumit are acquitted of the charges. They are directed to furnish bail bonds in the sum of Rs.10,000/- with one surety each in the like amount in compliance of section 437-A Cr. P.C within a week from today.

25. Prosecution has also miserably failed to prove its case beyond the shadow of doubt u/s 394/34 IPC against accused

Ravinder & Avinash. Accordingly, I hereby acquit both the accused persons of the offence u/s 394/34 IPC”.

6. In my view, there is no perversity in the reasoning adopted by the Trial Court, and there is no mis-direction in the appreciation of evidence. The presumption of innocence of the respondents/accused stands fortified by the impugned judgment. Consequently, I find no merit in this petition. Dismissed.

MARCH 04, 2015

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VIPIN SANGHI, J

