

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

DECIDED ON : FEBRUARY 13, 2015.

+ CRL.REV.P. 92/2015 & CrI.M.A.Nos.2215/2015 and 2216/2015

JOGINDER SINGH SETHI Petitioner

Through : Mr.S.K.Mishra, Advocate.

VERSUS

STATE (GOVT OF NCT OF DELHI) Respondent

Through : Mr.Navin K.Jha, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. The petitioner-Joginder Singh Sethi has filed the instant revision petition to challenge the legality and propriety of an order dated 15.01.2015 of learned Additional Sessions Judge: 04 (North), Rohini Courts, Delhi by which charge under Section 341/308 read with Section 120-B IPC and 120-B IPC was framed against him.

2. Learned counsel for the petitioner urged that there was no material before the Trial Court to proceed against him for the alleged crime. Undisputedly, the petitioner was not present at the spot and there is no evidence on record to infer if he had instructed co-accused persons to assault the complainant.

3. After the recording of DD No.19A on 22.11.2012 at Police Station Adarsh Nagar, SI B.S.Sedhu and Ct. Pradeep went to the spot. They came to know that a quarrel had taken place between V.D.Aggarwal and J.S.Sethi group. The Investigating Officer recorded the statement of the victim who implicated the co-accused persons and their associates to have inflicted injuries to him. He further revealed that the assailants were shouting that it was a good chance to finish him as he was the only hindrance in the way of taking possession by J.S.Sethi of the property. Apparently, involvement of the petitioner in the occurrence surfaced soon after the incident. During investigation, the police collected call details and it was revealed that petitioner J.S.Sethi was in regular contact with co-accused Balwinder @ Bobby on his Mobile No.9999866070 from his mobile No.9891272989. Balwinder Singh @ Bobby was in touch with other assailants Rahul Saxena, Rajiv Gautam and Inder Singh on Rahul Saxena's mobile No.9718886297 at the relevant time. Co-accused Balwinder Singh @ Bobby was admittedly working as manager with the petitioner during the relevant period. Statements of witnesses reveal that the assailants had named the petitioner at whose instance they were executing the conspiracy hatched by them to eliminate the complainant/victim. In their disclosure statements, the assailants

categorically confessed and disclosed that they assaulted the victim at the behest of the petitioner. Balwinder Singh @ Bobby in his confessional statement disclosed that he was working with J.S.Sethi and used to help him in his business as a muscle man. On 22.11.2012, on the asking of his employer J.S.Sethi, he had instructed his associates Rahul Saxena, Rajiv Gautam and Inder Singh to eliminate victim V.D.Agarwal. Accused Rahul Saxena, Rajiv Gautam and Inder Singh had disclosed in their confessional statements that they were working with the petitioner. All this material cannot be rejected or thrown away at this stage. The pleas raised by the learned counsel for the petitioner for discharge are primarily arguments on the merits of the case which are to be considered after the parties are given opportunity to establish their respective case during trial.

4. At the stage of framing of charge, the court has no jurisdiction to go into the merits of the allegations, and is only required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose in existence of all ingredients constituting the alleged offence. The Trial Court was not required to weigh the evidence as if it was for conviction or acquittal. In *State of Maharashtra vs. Som Nath Thapa & Ors.* 1996 Cr.5, 2448, the Supreme Court observed:

“ If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently if the court were to think that the accused might have committed the offence, it can frame the charge, though for conviction, the conclusion is required to be that the accused has committed the offence. It is apparent at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

5. In *Amit Kapoor vs. Ramesh Chander & Anr.* (2013) 1 SCC

(Cri) 986 the Supreme Court observed as under:-

“Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings. The legislature in its wisdom has used the expression 'there is ground for presuming that the accused has committed an offence'. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste, A Bench of this Court in the case of State of Maharashtra v. Som Nath Thapa and referred to the meaning of the word 'presume' while relying upon the Black's Law Dictionary. It was defined to mean 'to believe or accept upon probable evidence'; 'to take as proved until evidence to the contrary is forthcoming'. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was civil transaction

between the parties would not by itself alter the status of the allegations constituting the criminal offence.”

6. In the instant case, the petitioner has been charged for hatching conspiracy with the assailants. Presence of the conspirator is not essential at the spot. It is well known that criminal conspiracy is generally hatched in secrecy and direct evidence is rarely available. It can be proved by circumstantial evidence and inference can be drawn from various acts and the statements made by the co-conspirators. The Trial Court has discussed in detail all the relevant contentions and I find no illegality or irregularity in the impugned judgment.

7. In the light of the above discussion, the revision petition filed by the petitioner lacks merits and is dismissed. All pending applications also stand disposed of.

8. Observations in the order shall not have any impact on the merits of the case.

(S.P.GARG)
JUDGE

FEBRUARY 13, 2015/sa