

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

Date of Decision: February 09, 2015

+ (i) **CRL.M.C. 1469/2014 & CrI.M.A.5012/2014**

NITIN KUMAR Petitioner
Through: Mr. K.P.Mavi & Mr. B.P.Mishra,
Advocates

versus

STATE & ORSRespondents
Through: Ms. Nishi Jain, Additional Public
Prosecutor for respondent-State

+ (ii) **CRL.M.C. 2985/2014 & CrI.M.A. 10351/2014**

NITIN KUMAR Petitioner
Through: Mr. K.P.Mavi & Mr. B.P.Mishra,
Advocates

versus

STATE GOVT. OF NCT OF DELHI & ORS.Respondents
Through: Ms. Nishi Jain, Additional Public
Prosecutor for respondent-State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

CrI.M.A.1948/2015 in CrI.M.C. 1469/2014
CrI.M.A.1949/2015 in CrI.M.C. 2985/2014

The above captioned petitions were dismissed in default. The

applications seek restoration of above captioned petitions.

For the reasons stated in the applications, they are allowed and the petitions are restored to its original position.

CRL.M.C. 1469/2014 & CrI.M.A.5012/2014
CRL.M.C. 2985/2014 & CrI.M.A. 10351/2014

In the above-captioned first petition [CrI.M.C.No.1469/2014], the challenge is to order passed by trial court on 20th May, 2013 whereby the trial court has committed the case to the court of Sessions as the charge-sheet was filed in FIR in question for the offence under Section 307 IPC. Petitioner's prayer for further investigation also stands rejected by trial court's aforesaid order. Revisional Court vide impugned order of 13th January, 2014 has affirmed the above-said trial court's order. Whereas in the above-captioned second petition [CrI.M.C.No.2985/2014], challenge is to the order of 13th January, 2014 vide which petitioner has been put on trial for the offence under Section 307 IPC in FIR No.77/2010, which was initially registered for the offence under Section 324 IPC at Police Station Welcome, Delhi. With the consent of both the sides, the above-captioned two petitions were heard together and are being disposed of by this common judgment.

At the hearing, learned counsel for petitioner placed reliance upon decisions in *Court on its own Motion v. State* 2012 (3) JCC 1743, *R.Sarala v. T.S.Velu & Ors.* 2000 (4) SCC 459, *M.C.Mehta (Taj Corridor Scam) v. Union of India* 2007 (1) SCC 110 and *V.S.Achuthanandan v. R.Balakrishna Pillai & Ors.* 1994 (4) SCC 299 to submit that Public Prosecutor has no jurisdiction to direct addition of

Section 307 IPC in the charge-sheet. which was initially filed for the offence under Section 324/326 IPC. It was vehemently submitted by learned counsel for petitioner that it is the Investigating Officer, who has to decide as to what offence is made out and Public Prosecutor cannot direct Investigating Officer to file the charge-sheet for the aggravated offence. It was submitted that trial court's order of 20th May, 2013 committing the case to the Court of Sessions on the basis of charge-sheet filed under the directions of the Public Prosecutor is erroneous and so the impugned order as well as revisional court's order ought to be quashed and the case be remanded back to the Investigating Officer to file a fresh charge-sheet after making up his mind as to what offence has been committed by petitioner.

Learned Additional Public Prosecutor for respondent-State supports the impugned order and submits that after framing of charge, evidence of complainant, eye witness and doctor has been recorded and the matter is coming up before Sessions Court today for further evidence. Lastly, it is submitted that there is no substance in these petitions.

Upon hearing and on perusal of the impugned order, material on record and the decisions cited, I find that recommendation of the Public Prosecuting agency to add aggravated evidence is not binding on the Investigating Officer. However, merely because Investigating Officer after consulting Public Prosecutor has added Section 307 IPC, it would not render such an opinion open to judicial review. The question raised in above-captioned first petition really does not fall for consideration as on perusal of the order on charge, this court finds that offence under Section 307 IPC is prima facie made out in the facts of the instant case.

In the considered opinion of this Court, there is no illegality or infirmity in the impugned order of 13th January, 2013 where petitioner has been put on trial under Section 307 IPC.

Consequentially, both these petitions are dismissed while refraining to comment upon merits of this case and by making it clear that if trial court on the basis of evidence on record finds petitioner guilty for the lesser offence, then this judgment will not stand in the way of trial court to do so.

With aforesaid observations, these petitions and application are disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 09, 2015

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