

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

DECIDED ON : FEBRUARY 10, 2015

+ CRL.REV.P. 670/2014 & CRL. M.A.17115/2014

SHOAIB IQBAL

..... Petitioner

Through : Mr. Dayan Krishnan, Senior
Advocate with Mr.Akhand P. Singh
and Ms.Swati Goswami,
Advocates.

VERSUS

STATE (NCT OF DELHI)

..... Respondent

Through : Ms. Kusum Dhalla, APP for State.
SI Sushil Kumar, PS Jama Masjid.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (ORAL)

1. The instant revision petition has been preferred by the petitioner to challenge the legality and correctness of an order dated 27.09.2014 of learned Additional Sessions Judge by which charges under Sections 145/147/148/149/353/427/379/436 read with Section 109 IPC was ordered to be framed against him.

2. State has filed status report. I have heard the learned APP and learned senior counsel for the petitioner and have examined the file.

3. Admitted position is that on 22.07.2012, FIR No.58/2012 was lodged at Police Station Jama Masjid by Head Constable Raj Kumar. Initially, eight individuals/assailants were arrested and charge-sheet was submitted against them. Learned Metropolitan Magistrate took cognizance and committed the case to Sessions. Later on, supplementary charge-sheet was filed against ten more assailants on 20.05.2014. The court by an order dated 07.06.2014 after perusal of the record took cognizance against the petitioner as well as he appeared to have acted as an abetter and conspirator for the commission of the aforesaid offences. Subsequently, the case was committed to the court of Sessions and by the impugned order, charge was framed against the petitioner.

4. Indisputably, the petitioner was not named in the FIR and during investigation, his involvement in the crime did not surface. Neither in the main charge-sheet nor in the supplementary charge-sheet filed against the assailants any role in the crime was attributed to him. In fact, the petitioner was not at all charge-sheeted for his role whatsoever in the said FIR. The police did not seek any action, whatsoever, against the petitioner. Only when supplementary charge-sheet was filed against the

accused persons arrested subsequently, the learned Metropolitan Magistrate took cognizance against the petitioner because he was involved in FIR No.65/12 registered under Section 447 IPC and Section 3 of the Prevention of Damage to Public Property Act and Section 30 of the Ancient Monuments and Archaeological Sites and Remains Act at Police Station Jama Masjid. It was noted that the assailants in the instant FIR were raising slogan in the name of Shoaib Iqbal and this fact was also recorded in the complaint under Section 195 Cr.P.C. filed by Assistant Commissioner of Police, Sub Division Daryaganj, Delhi. Apparently, there was no material, whatsoever, in the charge-sheet before the learned Metropolitan Magistrate to infer petitioner's involvement in the said incident. The petitioner was not even present at the spot. There are no allegations that he was in regular touch with the assailants or that the crime was committed with his active connivance or instigation. Status report does not reveal if in the disclosure statements, the accused persons charge-sheeted had assigned any overt act to the petitioner or his role appeared in the incident in any form. The petitioner was not called for interrogation during investigation. Merely because the mob was raising slogans in his name, it was not sufficient for the learned Metropolitan Magistrate to proceed against the petitioner with the presumption that he

conspired or abetted the culprits in the crime. There was no material, whatsoever, before the trial court to frame charge under the aforesaid sections against the petitioner. None of the witnesses has spoken to any overt act on his part or his involvement in the alleged conspiracy/abetment. In support of the charge under Section 109 IPC, there was no factual foundation and no evidence at all. Neither in the disclosure statements of the accused persons nor in the statement of any witness, there is specific reference to the role of the present petitioner along with the main assailants. Settled legal preposition is that where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial. It is also true that if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused.

5. In the instant case, the prosecution had not asked to take cognizance for commission of any offence in the instant FIR against the petitioner. They had not relied on any material to prima facie show strong or grave suspicion about the involvement of the petitioner in the incident.

Merely because the petitioner was involved in earlier FIR for which he is facing trial or that the mob was raising slogan, in his name was not enough to charge him for the offences with the aid of Section 109 IPC with other original conspirators/abettors without proper and acceptable link between them.

6. In the light of the above discussion, the order dated 27.09.2014 qua the petitioner cannot be sustained and is set aside. The petitioner is discharged in this case.

7. The revision petition is allowed. Crl.M.A.17115/2014 also stands disposed of. Trial court (if any) record be sent back along with a copy of this order.

(S.P.GARG)
JUDGE

FEBRUARY 10, 2015

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