

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

Judgment Reserved on: February 01, 2016
% *Judgment Delivered on: February 08, 2016*

+ CRL.REV.P. 51/2012

STATE OF NCT OF DELHI Petitioner
Through: Mr. Rajesh Mahajan, ASC with
Ms. Parul Janiwal, Advocate with
Inspector Mahesh, PS Saket

versus

SHASHI KIRAN Respondent
Through: Mr. L.K. Verma & Mr. Priye Ram,
Advocates

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The State is aggrieved by the order dated 20.08.2011 whereby the learned ASJ has discharged the respondent Shashi Kiran in case FIR no.95/2011 under Sections 364/302/201/120-B IPC, PS Saket, Delhi.
2. The grievance of the State is that it was a case of conspiracy to eliminate Sanjeev Kumar - the business partner of the respondent Shashi Kiran who stands discharged. There was enough material on record to establish the motive on account of financial dispute between the deceased

and the respondent over the money which the deceased was earning from the business but allegedly not properly accounting for.

3. The grounds on which the impugned order has been challenged by the State are:-

(i) The learned Trial Court did not consider that the complainant Manoj Kumar – brother of the deceased levelled allegations against the respondent about financial dispute with the deceased.

(ii) The threats being given by the respondent and her husband Mishan Singh Tomar to face dire consequences if financial dispute is not resolved.

(iii) The documents of declaration shown to the deceased Sanjeev Kumar when he was called at the parking at Mehrauli were also seized at the instance of respondent.

(iv) The respondent was in constant touch with other two co-accused persons, one of whom is her husband and another driver, before and after commission of the crime.

(v) The dead body of Sanjeev Kumar was recovered from Gulawati in Uttar Pradesh and the location of the mobile phone of one of the accused is also of that area and respondent was in constant touch with the co-accused during that time.

4. On behalf of respondent, Mr.L.K.Verma, Advocate has submitted that the impugned order has been passed by the learned Trial Court after considering the entire material against the respondent. She has been rightly discharged on finding that there was not sufficient evidence on judicial record to connect her with the crime. It has been further

submitted that after the framing of charge, 53 witnesses have been examined and if the impugned order is interfered with, it will cause lot of inconvenience to the co-accused persons. Learned counsel for the respondent has submitted that since the impugned order does not suffer from any illegality, the revision petition may be dismissed.

5. I have considered the rival contentions and carefully gone through the record. The case FIR No.95/2011 under Sections 364/302/201/120-B IPC, PS Saket has been registered on the basis of statement made by elder brother of the deceased wherein he mentioned the following facts:-

(i) His younger brother Sanjeev Kumar aged about 30 years was working with Mishan Singh Tomar and his wife Shashi Kiran and they were running business at F-562, Laddo Sarai under the name Perfect Jodi Matrimonial.

(ii) His brother Sanjeev Kumar was responsible for the business of the firm.

(iii) On 07.03.2011 he left for his office on his motorcycle No.DL-9S-X-0782 but failed to return, for which missing report was lodged by his wife on 08.03.2011.

(iv) The complainant also returned from Shillong on 08.09.2011 and made inquiries from the office of the company of his brother to ascertain whereabouts of Sanjeev Kumar.

(v) The employee in the office Ms.Vandana informed that on 07.03.2011 at 1.45 pm Sanjeev received a call from Mishan Singh Tomar and thereafter he left the company office saying that the matter would be finally decided, as to whether he would run the company or Mishan

Singh Tomar and his wife Shashi Kiran would run. She also informed that this issue was going on for many days.

(vi) Motorcycle of Sanjeev Kumar was found parked outside the office.

(vii) On 06.03.2011 he had accompanied his brother to the house of Mishan Singh Tomar and Shashi Kiran where both of them and their son Shekhar pressurised them to clear the account by paying Rs.1.5 lacs which was due to them and in a threatening voice said '*Rupaye to hum nikaal hi lenge*'.

(viii) He suspected Mishan Singh Tomar, Shashi Kiran and their son Shekhar to be behind the murder of his brother and he also identified the dead body of his brother in a Mortuary in Bullanshehar, U.P.

(ix) After registration of FIR, investigation was conducted. Even call details record of the mobile phones were obtained which revealed that respondent was in constant touch with co-accused person.

6. At the stage of charge, vide impugned order the learned Trial Court had charged the two accused Sarvender Singh and Mishan Singh Tomar recording that counsel for the accused persons **had conceded** that charge be framed against them. Thus, so far as accused Sarvender Singh and Mishan Singh Tomar are concerned, they have been charged without any discussion about the alleged conspiracy hatched to eliminate the business partner of Shashi Kiran.

7. At the stage of consideration of charge, on behalf of respondent Shashi Kiran the only submission made by learned defence counsel which has been recorded by learned Trial Court in the order dated 20.08.2011 reads as under :-

*'So far as the accused Shashi Kiran is concerned, he argued **that there is the iota of evidence** on the judicial record to connect the accused with the alleged crime of conspiracy to eliminate the deceased.'*

(It appears that word 'no' is inadvertently missing in the above sentence before the word 'iota'.)

8. Since for respondent Shashi Kiran charge was not conceded, the learned ASJ has discharged her for the following reasons :-

*'During the course of investigation, IO apprehended Mishan Singh Tomar and Sarvernder Singh as well as accused Shashi Kiram. Against accused Shashi Kiran **there was only evidence of telephone call made by her to the phone of Sarvender, co-accused on the alleged date in the night when she had asked them about the work.***

No doubt conspiracy has been hatched in secrecy. In direct evidence of any nature is possible for establishing the offence of conspiracy yet to frame the charge there should be at least some evidence to connect the accused with the charge of conspiracy. In the present case the evidence of mobile phone call made by Shashi Kiran to the driver of her husband is not sufficient to frame the charge. Moreover, it is the duty of every wife to know about the whereabouts of her husband if the husband does not pick phone then she naturally would talk to the driver.

In the above circumstances, accused Shashi Kiran is discharged of the offence u/s 364/302/201/120-B IPC, order accordingly.'

9. Mr.Rajesh Mahajan, learned ASC for the State has submitted that the learned Trial Court erred in recording that the only evidence against

Shashi Kiran was of telephone call made by her on the phone of Sarvender Singh at the alleged night. Learned ASC for the State has prayed for setting aside the impugned order with direction to frame charge against the respondent Shashi Kiran as well.

10. Perusal of the material collected by the prosecution against the respondent Shashi Kiran – the discharged accused brings on record the following facts:-

(i) The deceased Sanjeev Kumar was partner of Shashi Kiran in the business under the name and style M/s Perfect Jodi Matrimonial Services at Laddo Sarai.

(ii) There was a dispute between the business partners for the alleged financial irregularities by the deceased during the period Shashi Kiran was not able to attend the office because ill-health of her husband i.e. accused Mishan Singh Tomar.

(iii) On 07.03.2011 the deceased received a phone call from Mishan Singh Tomar and thereafter he left the office and did not return thereafter.

(iv) The CDR of mobile of the respondent for the relevant period/duration provided a link between the discharged accused namely Shashi Kiran and two accused persons Mishan Singh Tomar – her husband and Sarvender Singh – driver who have been charged for committing the offence punishable under Sections 364/302/201/120-B IPC. As per the call detail record of mobile of respondent Shashi Kiran, she made calls at mobile No.9810837241 of Sarvender Singh and also received calls at her mobile No.9818792676 from the mobile number of Sarvender Singh at 12.10 hrs., 12.19 hrs., 19.51 hrs., 19.52 hrs., 19.54

hrs., 20.40 hrs., and 23.02.hrs, which shows that she was in constant touch with the co-accused Sarvender around the time of incident and was an active participant in the conspiracy. As per the CDR analysis, the respondent was allegedly in touch with both the co-accused soon before as well after the commission of crime.

(iv) It has come in the disclosure statement of all the three accused persons that mobile phone Mishan Singh Tomar was switched off as part of the plan and that the discharged accused Shashi Kiran was to visit the police station next day for lodging the missing report of Sanjeev.

(v) Statement of HC Satender Kumar is to the effect that on 08.03.2011 when he was on duty as Duty Officer from 8.00 am to 4.00 pm at PS Saket, Shashi Kiran w/o M.S.Tomar R/o C-222, Paryavaran Complex, Saidulajab came to him to lodge the report that Sanjeev Kumar S/o Sh.Nageshwar Lal, R/o Flat No.366, Saket, who was her business partner in M/s Perfect Jodi Matrimonial Services, was missing since 07.03.2011. He has also stated that she was asked to bring the photograph of the missing person and mobile numbers of his relatives and also to bring some office relative. He has also stated that Shashi Kiran left the police station and did not return thereafter.

(vi) The declaration on stamp papers showing that Shashi Kiran was selling the said firm to Sanjeev Kumar were recovered at the instance of Shashi Kiran. Statement under Section 161 CrPC of Vendor Sudhir Kumar Jain has also been recorded to the effect that on 26.02.2011 he has sold the stamp paper mentioned at Serial No.230609 in the name of

Sanjeev Kumar and stamp paper mentioned at Serial No.230610 in the name of Shashi Kiran to one woman and one boy.

11. Thus, from the above facts it is clear that the learned Trial Court while recording that only evidence against Shashi Kiran was the CDR/mobile phone call made by her to the driver is factually not correct. The learned Trial Court also erred in speculating the purpose of making calls observing that it is the duty of every wife to know the whereabouts of her husband if he does not pick phone then she would naturally to the driver.

12. When the two accused persons namely Mishan Singh Tomar and Sarvender Singh have been charged for conspiracy, it cannot be said that there was no evidence of conspiracy. As is commonly known, there can hardly be an occasion where direct evidence of conspiracy is available. Conspiracy, as it is said, is hatched in the dark and behind the curtains and, therefore, has to be inferred from all the attending circumstances of a case.

13. It is settled law that at the time of framing of charge the court is not required to make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial. It is also well settled that where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing charge. (*Union of India Vs. Prafulla Kumar, AIR 1979 SC 366*).

14. In the case *State of Bihar Vs. Ramesh Singh, 1977 SCC (Cri) 533*, scope of Sec.227 and 228 CrPC was discussed by the Hon'ble Supreme Court of India and it was held as under :-

“Reading Sec. 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at the stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Sec. 227 or 228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in the conviction.”

15. When the material produced by the prosecution against Shashi Kiran is examined in the light of above settled legal position, I find that the impugned order discharging the accused Shashi Kiran is liable to be set aside. Merely because substantial number of witnesses have been examined by the prosecution in this case is no ground to maintain the order of discharge as the revision petition has been filed by the State in February, 2012 and reason for delay in disposal of this matter is not attributable to the State.

16. In view of the above discussion, the impugned order dated 20.08.2011 to the extent of discharging the respondent Shashi Kiran, is set aside.

17. The learned Trial Court is directed to hear the parties and frame charge against the respondent Shashi Kiran.

18. A copy of this order be sent to the concerned Court for information and compliance.

19. Respondent is directed to appear before the concerned Court on 24th February, 2016

20. LCR be sent back alongwith copy of this order.

As prayed, copy of the order be given dasti to learned counsel for the parties.

PRATIBHA RANI, J.

FEBRUARY 08, 2016

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