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

+ **CRL.REV.P. 215/2011**

STATE

..... Petitioner

Through: Ms.Kusum Dhalla, APP for the State
with SI Yogesh Kumar PS Timarpur

versus

TRILOKCHAND & ORS

..... Respondents

Through: Mr.Shesh Datt Sharma, Adv. for R-4

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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11.05.2016

CRL.M.A.5443/2011

For the reasons stated in the application, the delay in filing of the revision petition is condoned.

The application stands disposed of.

CRL.REV.P. 215/2011

1. This revision petition has been filed by the State impugning the order dated 24th November, 2010 whereby learned Trial Court discharged the accused persons Trilok Chand, Nadim, Radhey Shyam, Mohd. Shahid & Shehzad. In respect of accused Islam, learned ASJ was of the view that only the offence under Section 411 IPC is made out against him which is triable by the Magistrate. Case was sent to learned Metropolitan Magistrate for trial against accused Islam only for the offence under Section 411 IPC.

2. On behalf of the State, the order on discharge of respondents have been challenged mainly on the ground that these accused persons made disclosure statement having committed robbery and at their instance part of the looted copper was recovered from Islam. Thus, the main ground to

impugn the order of discharge is alleged recovery from co-accused Islam who is facing trial for committing the offence punishable under Section 411 IPC.

3. Notice of the revision petition was sent to the respondents.
4. Heard.
5. Ms.Kusum Dhalla, APP for the State has placed on record the photocopy of the disclosure statement made by co-accused Trilok Chand, Radhey Shyam and Shahid pointing out memo by these accused persons and the disclosure statement made by accused Islam.
6. All the accused persons were charge-sheeted for committing the offence punishable under Section 395/368/412/279 IPC in case FIR No.326/2008 PS Timarpur.
7. After hearing learned APP for the State and learned counsel for the accused persons, learned ASJ discharged the respondents herein observing as under:-

“I am afraid though the part of the disclosure statement of the accused, Trilok Chand, Radhey Shyam, Mohd. Shahid and also Shehzad (absconding), in so far as it led to the recovery of the stolen property is a relevant fact and indicates that they had knowledge about the stolen property lying with co-accused Islam, this fact alone cannot inculcate them in regard to abduction and commission of robbery/dacoity. The accused Trilok Chand, Radhey Shyam, Mohd. Shahid and Shehzad (absconding) have not been identified by the complainant Ashutosh and Jitender as the real offenders. In other words, the identity of the accused persons as real offenders have not been established as required by law during the investigation. Their first time identification in the court, assuming it is established, shall be inconsequential. There is no

material collected/gathered by the investigating agency and put on the record in regard to any criminal conspiracy entered into between the accused persons to commit the crime in question.

In the light of the said view, I do not find any sufficient grounds to proceed against the accused, Trilok Chand, Radhey Shyam and Mohd. Shahid to frame charge U/S 365/279/395/34 IPC. Therefore, the accused persons namely Trilok Chand, Radhey Shyam and Mohd. Shahid are hereby discharged. The personal bond/surety bond of accused, Trlok Chand is hereby canceled. The accused Radhey Shyam and Mohd. Shahid are in JC in some other case. They are also ordered to be discharged in this case. Similarly, as against accused Nadeem, there is no material to proceed against him as well as he is also discharged and be released, if not required in any other case and accused Sehzaad is absconding and discharged in absentia to avoid abuse of the process of law and lastly as regards accused Islam, charge against him is prima facie made out u/s 411 IPC which is an offence triable by a Magistrate.”

8. The brief facts of the case as mentioned in the revision petition are that on 30th June, 2008, the complainant along with his driver Jitender was carrying on the consignment of 35 bundles of copper weighing about 5 tons in a tempo. At about 9.45 p.m. when they reached outer ring road near CNG Pump, their tempo was hit by another tempo. Some young boys came out of the other tempo and started beating complainant and his driver Jitender. They were abducted and made to lie down in the offending vehicle (Tempo) and were asked not to raise the voice. The said tempo was driven for about half an hour and thereafter it was stopped and the complainant Ashutosh and the driver Jitender were made to get down. Subsequently the complainant found the tempo in which they were travelling at Indraprastha town and the consignment was missing.

9. On 28th July, 2008, Trilok Chand was arrested by Special Staff (North

East) wherein he allegedly disclosed about commission of robbery relating to case FIR No.326/2008 PS Timarpur. Other co-accused were also arrested on the basis of disclosure statement and on their pointing out accused Islam was arrested from whom the part of the case property was recovered. Only accused Nadim was subjected to TIP but he was not identified by the complainant. Other accused persons were not subjected to TIP. The contents of the FIR reveal that even as per the complainant and his driver Jitender, the boys who allegedly abducted them took them in the same tempo in which those boys were driving whereas the tempo containing the copper was left at the place where it was allegedly hit by another tempo.

10. In the FIR neither the number of persons nor any description was given. Rather it was stated that few young boys came out of the offending tempo and started beating the complainant and his driver. Thereafter the complainant and the driver were taken away by those boys in the tempo which hit the tempo of the complainant.

11. It is nowhere mentioned in the FIR that some of those, few young boys remained at the place of accident, then how there could be a question of any offence in respect of the robbery being committed by those or any of those persons who took away the complainant and his driver.

12. In respect of the incident dated 30th June, 2008 FIR was registered on 1st July, 2008. Trilok Chand allegedly made disclosure statement before Special Staff, North-East District on 27th July, 2008 and recovery has been effected from Islam on 1st August, 2008 i.e. almost after a period of one month from the date of incident. There is no material available on record to show that the offence of dacoity or abduction was committed by the respondents/accused and they were identified to be the same persons who

were travelling in the tempo that hit the tempo in which the complainant along with his driver was going with the copper.

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

“Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.”

“If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any cannot show that the accused committed the offence then there will be no sufficient ground for proceeding with the trial.”

“If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then on the theory of the benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Sec. 227 or Sec. 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Sec. 228 and not under Sec. 227.”

14. When the case of the prosecution is examined in the light of above principles, I am of the considered view that the entire material even if totally accepted, does not prima facie make out any case to charge them for the offence punishable under Sections 395/368/412/279 IPC.

15. The revision petition is dismissed.

CRL.M.B.230/2013

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 11, 2016/‘pg’