

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

+ CRL.REV.P. 224/2014

Date of Decision: July 29th, 2016

STATE

..... Petitioner

Through Mr.Amit Chadha, APP for the State.

versus

S B YADAV

..... Respondent

Through Ms.Anupriya Yadav, Adv.

AND

+ W.P.(CRL) 781/2014

HC DILIP SINGH CHAUHAN

..... Petitioner

Through Mr.Pawan Sharma, Adv. with
Ms.Anupriya Yadav, Adv.

versus

THE STATE

..... Respondent

Through Mr.Rajesh Mahajan, ASC with
Mr.Amit Chadha, APP for the State &
Ms.Parul Jamwal, Adv.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. By this common judgment, I shall be disposing of two matters – Crl.Revision Petition No.224/2014 & W.P.(Crl.) No.781/2014.

2. The Crl.Revision No.224/2014 has been filed by the State seeking to set aside order dated 11.02.2014 passed by the Ld.Special Judge discharging the petitioner/S.B.Yadav while W.P.(Crl.) No.781/2014 has been filed by one of the co-accused HC Dilip Singh Chauhan.

3. The facts of the case in a nutshell are that on 17.10.2011 Sh.Naresh Gupta lodged a complaint wherein he stated that he had been residing at C-1/23, Phase-2, Ashok Vihar, Delhi since last 25 years. On 02.02.2009, his sister-in-law Neelam (wife of his younger brother Naresh Gupta) was admitted at Parnami Clinic and Ortho Joint Replacement Centre' as she had broken her hipbone after slipping in the bath room. A girl namely Rukhsar was working as a helper in this hospital whose work was quite good. After discharging Neelam from the hospital, doctors advised her to take rest for 3-4 months. So, after negotiating with Rukhsar's mother Smt.Ansaro Khatoon, Rukhsar was hired as a domestic help on a monthly salary of Rs.5,000/-. She worked till July, 2009. During this while, she got friendly with another domestic help Niranjan Sardar which was disliked by house mates and Rukhsar's mother was called and facts were told to her. After clearance of accounts, Rukhsar was sent back with her mother Ansaro. Later, SI Shri Bhagwan of PS Jahangir Puri came to Naresh Gupta and told that Rukhsar had run away from her house and her mother had got registered FIR No.540/2009, Police Station: Jahangir Puri. On 15.07.2010, HC Dilip Singh Chauhan sent a notice to Naresh

Gupta for joining the investigation on 19.07.2010. But on 16.07.2010, police reached his house to arrest him and told that Rukhsar in her statement had named Naresh Gupta for committing gang rape on her. Later, Naresh Gupta along with his brother in law met the SHO concerned and HC Dilip Singh Chauhan who said that the matter can be patched up whereafter SHO left the room. Later in a statement made before ACP Vigilance, Naresh Gupta stated that HC Dilip Singh Chauhan had taken Rs.20,000/- and Rs.2,50,000/- in cash from his brother-in-law Ratan Lal. Two days later, a meeting was arranged between the girl, her mother and Ratan Lal and in the presence of SHO S.B.Yadav, HC Dilip Singh Chauhan had taken Rs.3,00,000/- in cash. After he was called to police station upon serving a notice under Section 160 Cr.P.C., and Rs.50,000/- in cash was taken from him and Dilip Singh said that SHO was demanding more money. It is stated that SHO S.B.Yadav and HC Dilip Singh had extorted a sum of Rs.7,00,000/- in cash. This money had been given to save his honor. Based on the enquiry report of vigilance, orders of senior officers and given statements, a case under Sections 7,8, 13 of Prevention of Corruption Act and under Sections 384/201/120-B IPC was registered in PS: Jahangir Puri.

4. During investigation, IO recorded the statements of Sh.Rattan Lal, Sh.Uma Shanker, Sh.Anil Gupta and Sh.Naresh Gupta who all stated that the IO had demanded bribe from them. Rattan Lal also produced an audio CD with respect to his

conversation with Ansaro Begum where she accepted that HC Dilip Singh Chauhan had taken money from Rattan Lal and that Rs.3,00,000/- was given to Dilip Singh in front of the SHO.

5. Rattan Lal in his statement stated that on 16.07.2010 HC Dilip Singh Chauhan had got changed five tyres of a Santro Car belonging to a police officer whose payment was given by him and Naresh Gupta. HC Dilip Singh Chauhan along with Bal Bahadur, driver of Naresh Gupta, had gone to Ashok Vihar, Phase-I for getting the tyres of the car changed bearing registration No.DL 4C AG 1568. Rattan Lal also presented a copy of the bill. HC Dilip Singh Chauhan later arrested Anil Gupta and demanded Rs.25,000/- in lieu of his release. On non payment of the same, he arrested Anil Gupta on 06.08.2010 and sent him to jail while photos of marriage of Anil Gupta with Rukhsar had been produced to HC Dilip Singh Chauhan.

6. On 27.07.2010, Dilip Chauhan demanded delivery of wheat, rice and grams of value around 10-12 thousand at his house in Model Town, Delhi. On 27.04.2012 and 03.05.2012, Inspector S.B.Yadav and HC Dilip Singh Chauhan, surrendered before the court. They were arrested and taken in police custody.

7. During investigation, it was revealed that on 16.07.2010 Lal Bahadur, driver of Naresh Gupta, accompanied HC Dilip Singh Chauhan to Roop Nagar to pick a car from a house which belonged to ACP Jai Bhagwan and that car was found registered in the name of Ved Parkash, brother of ACP Jai Bhagwan,

ACP, Jahangirpuri. Requisite sanction to prosecute the accused was obtained and they were charge sheeted under Sections 7, 13(i)(d) of Prevention of Corruption Act and under Sections 384/201/120B IPC.

8. After hearing the rival contention, the Trial Court held that the meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is a sine qua non for the offence of criminal conspiracy and in the instant case there was nothing on record to establish that there was prior meeting of mind of accused S.B.Yadav and HC Dilip Singh Chauhan whereby they hatched a criminal conspiracy in order to extract bribe from the complainant and his brother-in-law Ratan Lal and thus petitioner/accused S.B.Yadav was discharged. However, concerning the accused Dilip Singh Chauhan, the Trial Court held that the petitioner/accused Dilip Singh Chauhan deserves to be charged as there was adequate material on record to prima facie establish a case U/S 7 and 13 (2) r/w Section 13 (1) (d) of Prevention of Corruption Act, 1988 against him.

9. The learned counsel for the petitioner/HC Dilip Singh Chauhan has taken the grounds in the petition that the complaint in question was filed by the complainant who is an accused in a rape case with a view to settle his score and the refusal of the petitioner to entertain the request of his senior officers to shield accused Naresh Gupta. The co-accused S.B.Yadav has been discharged and the petitioner is also on

the same footing and deserves parity. The complaint in question is a counter blast against the fair investigation conducted by the petitioner in FIR No.540/2009, PS: Jahangir Puri. The sanction obtained is contrary to the provisions of Section 19(2) of the PC Act and the Joint Commissioner of Police who granted sanction was lacking jurisdiction. There were no allegations of demand and acceptance of bribe by the petitioner in the complaint.

10. The grounds taken by the State in their revision petition against the discharge of the accused/S.B.Yadav are that there are specific allegations against him in the complaint which prima facie discloses the commission of offence; the Trial Court was not required to analyze the evidence in detail at the time of framing charge; there is material on record that both the accused hatched a criminal conspiracy to extract bribe from the complainant and Rs.3,00,000/- were given in the presence of accused S.B.Yadav but despite the same, he did not take any action against accused HC Dilip Singh Chauhan which shows criminal conspiracy among the accused persons. The learned APP in support of his case has relied upon the judgment in case of *Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra; 2008 (6) Scale 469* and *State of Maharashtra v. Priya Sharan Maharaj; 1997 (4) SCC 393*.

11. I have heard the learned counsel for the parties and perused the record.

12. The record reveals that the complainant Naresh Gupta in

his statement had stated that both the accused had demanded money for solving the case which was registered against the complainant as the case was a big one. The complainant authorized his brother-in-law Rattan Lal to handle the payments to be made to the accused persons. Rattan Lal in his statement had stated that on different occasions he paid different amounts to the accused HC Dilip Singh Chauhan. He also stated that on asking of accused Dilip Singh Chauhan he got replaced five tyres of a car. He specifically stated that on 16.07.2010 he had paid Rs.20,000/- to accused HC Dilip Singh Chauhan and subsequently he also paid a sum of Rs.2.5 lakhs. He further paid Rs.3 lakhs to accused HC Dilip Singh Chauhan for giving the same to the mother of the prosecutrix. Subsequently also, he made various payments to accused HC Dilip Singh Chauhan and also made payments with regard to items purchased for him.

13. As per the statement of the complainant and his brother in law Rattan Lal, all the demands of money and articles were made by accused HC Dilip Singh Chauhan. There is no allegation in any of the statements of these witnesses that accused Inspector S.B.Yadav had ever demanded any money from them or received anything in cash or kind from them.

14. It is a settled law that for constituting a criminal conspiracy, prior meeting of minds is a sine qua non, but in the present case, the ingredients of constituting criminal conspiracy are missing. There is no material on record to

show that both the accused persons had hatched any criminal conspiracy either to demand illegal gratification or acceptance of any money from the complainant's side for showing any favour or disfavour in the case lodged by the complainant Naresh Gupta. In the absence of any material against accused S.B.Yadav, it cannot be said that case for framing charge was made out against him.

15. On the other hand, there are specific allegations and material against accused HC Dilip Singh Chauhan that he demanded illegal gratification and accepted the same from Rattan Lal for facilitating the complainant Naresh Gupta in the rape case in which accused HC Dilip Singh Chauhan was the IO. So, prima facie, there was sufficient material against him to frame charge.

16. In view of above discussion, this Court is of the considered opinion that there is no any infirmity or illegality in the impugned order dated 11.02.2014 to frame charge against accused HC Dilip Singh Chauhan and to discharge accused S.B.Yadav.

17. Both the petitions are accordingly dismissed.

(P.S.TEJI)
JUDGE

JULY 29, 2016
dm/dd