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

Judgment Reserved on: April 27, 2016

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Judgment Delivered on: May 02, 2016

+ CRL.REV.P. 277/2012

HITENDER SINGH

..... Petitioner

Through: Mr.Surender Singh, Advocate.

versus

NCT OF DELHI

..... Respondent

Through: Ms.Rajni Gupta, APP for the State
with SI Bharat Lal, PS Hauz Khas.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. This revision petition has been preferred by the petitioner Hitender Singh, who is one of the accused in case FIR No.363/2010 under Sections 186/353/307/411/34 IPC and under Sections 25/27/54/59 of Arms Act registered at PS Hauz Khas, Delhi.

2. The petitioner is seeking discharge in the said FIR mainly on the following grounds:-

(i) For the offence punishable under Section 186 IPC, no complaint was filed as required under Section 195 CrPC hence cognizance could not have been taken by the Court.

(ii) No overt act has been attributed to the petitioner who was merely sitting on the rear seat in the vehicle.

3. I have heard learned counsel for the petitioner and also gone through the written submissions filed on behalf of the petitioner.

4. Mr.Surender Singh, learned counsel for the petitioner has submitted that learned Trial Court has failed to consider that requirements of Section 195 CrPC have not been complied with by the investigating agency. The cognizance of the offence has been taken on the chargesheet filed by the police without there being a criminal complaint as required under Section 195 CrPC.

5. Learned counsel for the petitioner has relied upon *Vasudev vs. State* 1984 (7) DRJ 248, *Gurinder Singh vs. State* 61 (1996) DLT 104, *P. Btiraj vs. K.Muniyandi* 1995 Criminal Rulings 219, *Bhagat Ra, vs. State of Punjab* 1991(1) CrL.L.J. 246, *Ashok & Anr. Vs. The State* 1987 CrL.L.J. 1750, *Sushil Sharma & Ors. vs. State & Anr.* in CrL.Rev.P. No.418/2008 decided on 27.02.2015 and submitted that in the absence of any complaint under Section 195 CrPC filed by the local police/complainant with the concerned Magistrate, the primary condition for prosecution of the petitioner for committing the offence punishable under Section 186 IPC being not satisfied, the prosecution is technically wrong and not in accordance with the procedure laid down under Code of Criminal Procedure.

6. The contentions raised by learned counsel for the petitioner being contrary to record and settled legal position are liable to be rejected. At the outset, it is necessary to mention that chargesheet against the petitioner and his co-accused was filed before the learned Magistrate. Alongwith the chargesheet, complaint under Section 195 CrPC by Dy. Commissioner of

Police, South District, New Delhi was also annexed. The list of witnesses filed alongwith the chargesheet shows that at Serial No.7, S.O, to Addl. DCP/SD, Hauz Khas, New Delhi has been cited as a witness to prove the complaint under Section 195 CrPC. The cognizance in the matter has been taken by the learned Magistrate and after compliance of requirements of Section 207 CrPC , the case was committed to the Court of Sessions as one of the offence allegedly committed by the accused persons is punishable under Section 307 IPC which is triable by the Court of Sessions. The order passed by the learned Magistrate taking cognizance of the offence has not been challenged before this Court. The order on charge passed by the learned Magistrate and impugned before this Court shows that the petitioner has not raised the issue of complaint under Section 195 CrPC before the learned ASJ at that stage. The contentions raised on behalf of the accused persons have been noted down in paras 2 to 4 of the impugned order and are extracted as under:-

'2. Ld. Counsels for the accused persons have argued that the entire prosecution story is concocted inasmuch as it is not clear as to who was driving the car and who was sitting with the driver on the front seat of the car. According to the FIR, Mukeem and Aamir Khan both were drivers of the car whereas katta was used by the person sitting on the seat near the driver. It has been further stated that there is no mention in the FIR as to how and from whom the katta was recovered.

3. Sh.S.S.Bhatia, ld. Counsel for accused Rahul argued that from him a golden broken chain has been recovered and hence at the most charge under Section 411 IPC can be leveled against him, and no charge under Sections 186/353/307 IPC can be levelled against him as he was sitting on the back seat of the car whereas the firing if at all made was by the persons sitting on the front seat of the car near the driver seat.

4. *For accused Aamir Khan, it has been argued by Sh.Surender Kumar, Advocate that at the most, charge under Arms Act can be leveled against the accused Aamir.'*

7. The contentions raised on behalf of the State have been noted in para 5 of the order and thereafter accused persons were ordered to be charged for the offences as recorded in para 8 of the order, which reads as under:-

'8. Accused Mukeem Khan is thus liable to be charged u/s 307/186/353/34 IPC and u/s 25/54/59 of the Arms Act. He is also liable to be charged under Section 27 of the Arms Act. Accused Amir Khan is liable to be charged u/s 186/353/34 IPC and under Section 25/54/59 of the Arms Act. Accused Farin Khan and Rahul Singh are charged u/s 186/353/34/411 IPC and accused Hitendra Singh is charged u/s 186/353/34 IPC.'

8. Thus the accused Hitender Singh, who is petitioner before this Court has been charged only for the offence punishable under Sections 186/353/34 IPC.

9. In the decision reported as ***Durgacharan Naik & Ors. Vs. State of Orissa*** 1996 AIR 1775 it was held as under:-

'Sections 186 and 353 of Penal Code relate to two distinct offences and while the offence under the latter section is a cognizable offence, the one under the former is not so. The ingredients of the two offences are also distinct. Section 186, Penal code, is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under S.353, Penal Code, the ingredients of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch.X of the Penal Code dealing with contempts of the lawful authority of public servants, while S.353

occurs in Ch.XVI regarding the offences affecting the human body.

Section 195 CrPC does not bar the trial of the accused for the distinct offence under S.353 of Penal Code, though it may be practically based on the same facts as for the prosecution under S.186 of the Penal Code which is barred for want of necessary sanction under S.195 CrPC.'

10. The petitioner has been charged for committing the offence punishable under Section 353/186/34 IPC. The offence of obstructing public servant is punishable under Section 186 IPC and is non-cognizable. The other offence for which the petitioner and his co-accused persons have been charged are cognizable offences. Thus, when two or more offences are made out and one of them is non-cognizable and other are cognizable, the complaint case need not be filed as police file the chargesheet. Section 155(4) of Code of Criminal Procedure provides that where the cases relate to two or more offences of which at least one is cognizable, the case shall be deemed to be cognizable case notwithstanding other offences are non-cognizable.

11. So far as offence punishable under Section 353 IPC is concerned, it being a distinct offence, even if there was no complaint under Section 195 CrPC, he cannot be discharged.

12. So far as offence punishable under Section 186 IPC is concerned, the prayer for discharge is liable to be rejected as not only there is complaint under Section 195 CrPC filed alongwith the chargesheet, a witness has also been cited at serial No.7 in the list of witnesses to prove the same. The cognizance was taken by the Magistrate after considering the material on record which included complaint under Section 195 CrPC. The order taking cognizance was never challenged by the petitioner.

13. Finding no illegality, infirmity or perversity in the impugned order, the revision petition is dismissed.

CRL.M.A.6478/2012 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 02, 2016

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