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

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Date of Decision: 19th May, 2016

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CRL.REV.P. NO.388/2012

STATE NCT OF DELHI

..... Petitioner

Through: Ms.Rajni Gupta, APP for the State
with SI Ashok Kumar PS Dwarka
North

versus

KRISHAN KUMAR

..... Respondent

Through: Ms.Raghav Payal, Advocate

PRATIBHA RANI, J. (Oral)

1. This revision petition has been filed by the State impugning the order dated 21st November, 2011 whereby the respondent herein has been discharged in case FIR No.109/2010 under Sections 393/398/34/511 IPC and under Sections 25/27/54/59 Arms Act, PS Dwarka North.
2. In brief the prosecution case is that in respect of an accident that had taken place on 8th March, 2010 within the jurisdiction of PS Dwarka North, case FIR No. 107/2010 under Section 279/337/304-A IPC was registered on 8th March, 2010. However, during investigation of that case, on the basis of statement made by Constable Ram Niwas, it was revealed that one of the accident victim before being taken to the hospital had taken out a country made revolver from the right side dub of his pant and threw it in a ditch towards the north direction of the place of accident.
3. Ms.Rajni Gupta, APP for the State has submitted that on the basis of statement made by Ct.Ram Niwas, country made revolver was recovered. Initially a case under Sections 25/27 of the Arms Act was registered and

thereafter on the basis of statement of Amit Tyagi who was an accused in case FIR No.107/2010, PS Dwarka North, Sections 393/398/34 IPC were also added in case FIR No.109/2010.

4. Learned APP for the State has further submitted that both the cases are cross cases and have to be tried independently by the same Court and evidence in one case cannot be considered as evidence in cross case which has to be dealt with on the basis of material collected in the cross case, hence the impugned order discharging the respondent herein being illegal, is liable to be set aside. Learned APP for the State has relied upon ***Surender Kaushik & Ors. vs. State of U.P. & Ors.*** decided on 14.02.2013 and ***Nathilal vs. State of U.P.*** 1990 (Supp.) SCC 145 in support of his contentions and prayed for setting aside the impugned order.

5. The case was listed for directions for today to ascertain the sequence of events and what was reported by Ct.Ram Niwas when HC Charan Singh alongwith Ct.Mohan Ji reached the spot and found Ct.Ram Niwas present there.

6. The prosecution has placed on record the copy of the statement of witnesses recorded under Section 161 Cr.P.C. in case FIR No. 107/2010 under Section 279/337/304-A IPC, PS Dwarka North.

7. DD No.8-A recorded on 08.03.2010 is having the endorsement by HC Charan Singh which formed basis of registration of case FIR No. 107/2010 under Section 279/337/304-A IPC. As per the said DD, following facts emerge on record:-

(i) When HC Charan Singh and Ct.Mohan Ji reached the spot, he found motorcycle No.DL-9S-V-1702 (red colour Pulsar) lying in accidental condition and blood spread in the middle of the road.

(ii) One Bumper of Toyota Car with broken number plate was also found

lying there.

(iii) The number from the broken pieces of number plate was ascertained to be DL-4C-AE-9121.

(iv) No eye witness was present at the spot.

(v) **Ct.Ram Niwas who was already present there informed that injured have been removed to DDU Hospital by PCR Van.**

(vi) HC Charan Singh reached the hospital and found that on MLC of Parveen, he has been declared as 'brought dead'.

(vii) On the MLC of Krishan – respondent herein, he was found admitted and though doctor declared him 'fit for statement', he was unable to make any statement.

(viii) After sending rukka through Ct.Mohan Ji, HC Charan Singh proceeded to the spot.

8. **Statement of Ct.Ram Niwas is to the effect that on the day when he was on patrolling duty, he saw two persons lying in injured condition at the spot. One of them was unconscious and other was having head injury and also injuries on his hand and legs.** Thus, when HC Charan Singh first reached the spot, Ct.Ram Niwas had informed him about the injured persons being taken to hospital by PCR without mentioning of any countrymade revolver being thrown by one of the injured in the bushes which would have been the first thing to be informed to HC Charan Singh. The second injured i.e. Krishan Kumar – respondent herein was not in a position to move his limbs and on having head injury, he could not be in a position to take out and throw the countrymade revolver in presence of police. There is a time gap of removing the injured to the hospital by the PCR van and arrival of HC Charan Singh at the spot. In case of throwing of countrymade revolver in the bushes in the presence of Ct.Ram Niwas, the

first reaction would have been to pick the revolver from the bushes and inform the local police station as well to inform HC Charan Singh when he reached the spot.

9. FIR No.109/2010 under Section 393/398/34/511 IPC cannot be treated as a cross case to FIR No.107/2010 under Sections 279/337/304-A IPC, PS Dwarka North.

10. In the case State of Bihar Vs. Ramesh Singh, 1977 SCC (Cri) 533, scope of Sec.227 and 228 [Cr.P.C.](#) were 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.’

11. In another case Bhim Singh Vs. State, 1994(1) CC Cases 578 (High

Court), and (State of U.P. Through CBI) S.P.E. Lucknow & Ors. Vs. R.K. Srivastava & Ors. AIR 1989 SC 2222 it has been observed as under:-

'The stage of framing charges is an important stage in the criminal trial and the Judge concerned has to carefully evaluate and consider the entire available material on record and he must judiciously apply his mind regarding framing of charges, erroneously would mean futile criminal procedure for several years. The responsibility of the Judge concerned is particularly far greater in our country because of long delay in criminal trials and final disposal of criminal prosecution for several years. Long prosecution invariably leads to the tremendous harassment, mental agony and immense distress. Therefore, there has to be proper judicial scrutiny before framing of charges and rigour of futile prosecution and trials should be avoided. If it is doubtful, it may be relevant to mention that at the stage of framing of charge, the learned Judge does not have to record evidence and evaluate the case from this angle whether the available material and evidence would lead to conviction of the petitioner/accused – It becomes the bounded duty of the Court to discharge the accused of that particular charges in order to do full and complete justice. (Section 228 of Cr.P.C.).'

12. The chargesheet in case FIR No.107/2010 under Section 279/337/304-A IPC PS Dwarka North and endorsement on the rukka by HC Charan Singh after questioning Ct.Ram Niwas, goes to the root of this case. Since there was not even a whisper about the respondent Krishan Kumar being found in possession of countrymade revolver and throwing it in the bushes in the presence of Ct.Ram Niwas when he was just lying on the road with head injury and injuries on his hand and legs, subsequent version of Ct.Ram Niwas and Amit Tyagi who was an accused in case FIR No.107/2010 under Section 279/337/304-A IPC was not sufficient to prima facie form an opinion that a case under Sections

393/398/34/511 IPC and under Sections 25/27/54/59 Arms Act is made out against the respondent Krishan Kumar who was injured and star witness in case FIR No.107/2010 under Section 279/337/304-A IPC, PS Dwarka North.

13. The impugned does not suffer from any illegality or infirmity calling for any interference by this Court in exercise of its revisional jurisdiction.

14. The revision petition is dismissed.

PRATIBHA RANI, J.

MAY 19, 2016

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