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

+ CRL.REV.P. 365/2016 & CrI.M.A. No.8016/2016

BITTO SINGH

..... Petitioner

Through: Mr.B.S. Chaudhary, Advocate.

versus

STATE GOVT (NCT) OF DELHI

..... Respondent

Through: Mr.Sudershan Joon, APP for the State
with SI Amit Kumar, PS Punjabi
sBagh.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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16.05.2016

1. This petition has been preferred by the petitioner Bitto Singh who has been charged for committing offence punishable under Section 392/34 IPC as well Section 397 IPC.
2. After the charge was framed, the petitioner filed an application under Section 216 Cr.P.C., praying for alteration of the charge on the ground that Section 397 IPC is not attracted.
3. Vide the impugned order dated 3rd March, 2016, learned ASJ dismissed the application, observing that the charge has been rightly framed against all the accused persons and accused Bitto Singh has also rightly been charged under Section 397 IPC as surgical blade was not only shown to the complainant at the time of committing robbery but also injuries were caused to Ct. Girish, when after committing robbery all the accused persons were trying to flee from the spot and traffic police tried to apprehend them.

4. Mr.B.S. Chaudhary, learned counsel for the petitioner submits that in order to attract Section 397 IPC, it was necessary for the prosecution to bring on record that the deadly weapon was used and grievous hurt was caused. He has submitted that in this case alleged weapon of offence was surgical blade and the nature of injury suffered by Ct. Girish was simple, hence, the impugned order may be set aside.

5. Perusal of the FIR reveals that three boys tried to rob the mobile phone from the complainant and when he resisted, one of those three boys threatened the complainant by showing him the surgical blade and asking him to runaway or he would be killed. The complainant immediately informed the traffic police on duty there and those traffic police officials tried to catch those three boys on the pointing out of the complainant. Out of them, one boy managed to escape and other two persons were apprehended. As per the FIR, the boy who had threatened the complainant with the surgical blade, also attacked the traffic police constable causing injuries on his hand and identified as accused Bitto Singh.

6. In the instant case, the robbery has been allegedly committed of a mobile phone by threatening the complainant with a surgical blade. The surgical blade has been used to threaten the complainant and the injuries have been caused in an attempt to carry away the robbed mobile phone. Section 397 IPC reads as under:

“Robbery, or dacoity, with attempt to cause death or grievous hurt, - If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.”

7. As per the complainant, the deadly weapon i.e. surgical blade was allegedly used while trying to carry away the robbed mobile and threat was given to the complainant to run away or he would be killed, by showing him the surgical blade. The traffic police officials chasing the robbers were also not spared as injury was caused to one of the traffic police constables.
8. Learned counsel for the petitioner has tried to argue this petition referring to the statement of Ct.Girish Kumar, examined as PW1, before the Trial Court. For the purpose of framing of the charge, it is not for this Court to appreciate his deposition.
9. *Prima facie* an offence punishable under Section 397 Cr.P.C. is made out against the petitioner on the basis of the statement made by the complainant, hence, the application filed by the petitioner under Section 216 Cr.P.C. has rightly been dismissed by the Trial Court.
10. Finding no infirmity and illegality in the impugned order, the revision petition is dismissed.

PRATIBHA RANI, J.

MAY 16, 2016
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