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

% *Date of Decision : 20th January, 2016*

+ **CRL.REV.P. 680/2010**

STATE NCT OF DELHI Petitioner

Through: Ms.Rajni Gupta, APP for the State

versus

RATTAN CHOPRA Respondent

Through: None.

PRATIBHA RANI, J. (Oral)

Crl.M.A.16561/2010

1. For the reasons stated in the application, 172 days' delay in filing the petition is condoned.
2. Application stands disposed of.

CRL.REV.P. 680/2010

1. The State has invoked the revisional jurisdiction of this Court with a prayer to set aside the order dated 06.04.2010 passed by learned Trial Court whereby the respondent Rattan Chopra has been discharged in FIR No.162/2009 under Sections 186/353/307/34 IPC and 25/27/54/59 Arms Act, PS Aman Vihar.
2. Notice of the revision petition was sent to the respondent.
3. Despite the fact that the revision petition is pending since 2010, the State has failed to get the respondent Rattan Chopra served despite many opportunities being given for that purpose even to the extent that service on the respondent was ordered to be effected through affixation.
4. Since this revision petition for setting aside the order of discharge of the respondent is pending for a long time, I have heard learned APP for the

State.

5. Ms.Rajni Gupta, learned APP for the State has submitted that in this case FIR was registered on the statement of Inspector Jarnail Singh who was heading the raiding party to nab the offenders involved in carjacking of luxury vehicles in Delhi. Inspector Jarnail Singh in his statement has specifically stated that he could identify the offenders. The respondent Rattan Chopra after his arrest, refused to take part in TIP proceedings and that should have been a sufficient ground to charge him for the offences complained of.

6. On 19.01.2016, the State was directed to argue the matter referring to the material which could have been considered by the learned ASJ for purpose of framing the charge against the respondent as well why the discharge order needs to be interfered with by this Court in exercise of revisional jurisdiction.

7. Learned APP for the State has placed on record copies of the statements of Inspector Jarnail Singh, SI Jai Prakash, SI Gagan Bhaskar and HC Kuldeep recorded under Section 161 CrPC. Learned APP for the State has submitted that she is not having the copy of the proceeding conducted by learned MM wherein refusal by the respondent to take part in TIP proceedings was recorded.

8. Vide impugned order dated 06.04.2010, the learned MM has discharged the respondent Rattan Chopra observing as under :-

“FIR No.162/09

PS Aman Vihar

6.4.2010

Present : Sh.Ram Pyara, Addl. PP for the State.

Accused Manoj Bakarwala is produced from J/C.

Accused Rattan Chopra is present on bail.

Retired IO/SI Jai Prakash is present.

At the very outset the accused Manoj Bakarwala has prayed for appointing a counsel for him on state expenses as he is unable to pay fee of the counsel, who was appearing for him in this case. Accordingly, Sh.Sachin Dev Sharma, who is representing accused Rattan Chopra as Amicus Curiae is also appointed as A/Curiae for accused Manoj Bakarwala to defend him in this case on state expenses.

Heard on the point of charge.

It has been submitted by the Amicus Curiae for both the accused persons that although he is considering for framing of charge against accused Manoj Bakarwala but, he is strongly opposing framing the charge against accused Rattan Chopra as there is no material at all to connect accused Rattan Chopra with the alleged offence and there is no overt act imputed to accused Rattan Chopra in the statement of various witnesses recorded by IO.

Ld.APP has submitted that in the FIR No. it is clearly mentioned that accused Manoj Bakarwala and his associate i.e. accused Rattan Chopra, whose name was revealed later on, had fired towards the police party with the weapons which they were carrying at that time and the rukka was prepared by the IO and for the reason best known to the IO/SI Jai Prakash Dahiya why he had given clear chit to accused Rattan Chopra while recording statement of the witnesses in this case and as per FIR the charge is made out against both the accused persons for the sections mentioned in the charge sheet.

I have given thoughtful consideration to the entire evidence arrayed by the prosecution to prove the guilt of both the accused persons and from perusal of the statement of witnesses recorded by the IO in this case. I find that there is no adequate evidence against accused Rattan Chopra to frame a charge against him under any of the offences alleged in the charge sheet. He is accordingly discharged in this case.

Ld.Amicus Curiae for accused Manoj Bakarwala has consented for framing of charge against accused Manoj Bakarwala. On being satisfied that prima-facie case exists against accused Manoj Bakarwala, the charges are directed to

be framed against him for the offence U/S 186/353/307 IPC.

The charge has accordingly framed against accused Manoj Bakarwala to which he pleaded not guilty and claimed trial.

Case is now adjourned for Prosecution Evidence to 12th May, 2010.

*Sd/-
ASJ (O)-II/Rohini
06.04.10”*

9. Statements of Inspector Jarnail Singh and his team members do not contain any description or name or any mark of identification of associate of Manoj Bakarwala, who has been ordered to be charged in case FIR No.162/2009 under Section 186/353/307/34 IPC and under Section 25/27/57/59 of Arms Act, PS Aman Vihar.

10. The report under Section 173 CrPC, copy of which has been annexed with this petition and copies of the statement of PWs Inspector Jarnail Singh, SI Jai Prakash, SI Gagan Bhaskar and HC Kuldeep have been perused. As per the report under Section 173 CrPC, on the date of incident at about 11.45 pm one Endeavour Car came from Karala Village side and two persons were sitting on the front seat. The informer pointed to the Inspector that the said vehicle had been stolen from Vasant Vihar and the car was being driven by Manoj Bakarwala. The registration number of the vehicle was HR-99-DA-Temp.-4759. The Inspector who was in a private vehicle, directed the driver to overtake the said vehicle and efforts were made to do *nakkabandi* at the carriage way from Karala to Budh Vihar side in an attempt to stop that Endeavour car. The police officials in uniform were also directed to stop that vehicle. Inspector Ishwar Singh had also put his vehicle to cover the said vehicle. On seeing the police party and finding themselves to be surrounded by the police, Manoj Bakarwala and his

associate started firing towards the police party. The police party also fired towards them in their defence and also tried to puncture the tyre of the Endeavour car. However, Manoj Bakarwala managed to reverse his vehicle and tried to overrun HC Kuldeep. The moment the police party tried to save themselves and moved backward, Manoj diverted his vehicle on *kaccha rasta* and while firing towards the police party, managed to escape towards Karala Village. Because of their alertness, none of the member of the raiding team suffered injuries. Inspector Jarnail Singh further stated that he could identify both the persons who were sitting in Endeavour Car if produced before him.

11. The question which requires to be considered in this revision petition is whether mere refusal to take part in Test Identification Parade is sufficient to form an opinion about the existence of a prima facie case against the respondent so as to interfere with the order of discharge passed by learned Trial Court. At the stage of consideration of framing of charge, the Court is required to consider the police report under Section 173 Cr.P.C. and the material annexed therewith to form an opinion about prima facie existence of the ingredients of the offence complained of to be satisfied. If on the basis of material on record, a prima facie opinion can be formed that accused might have committed the offence, the Court can frame the charge.

12. From the statements of PWs Inspector Jarnail Singh, SI Jai Prakash, SI Gagan Bhaskar and HC Kuldeep, it is clear that Manoj Bakarwala had been named and identified by the informer. So far as his associate was concerned, he was not described either by name or by description. It is also to be noted that as per the report under Section 173 CrPC Rattan Chopra was arrested on 27.09.2009 vide DD No.28-A under Section 41.1 CrPC and thereafter his disclosure statement was recorded about his involvement in

this offence. Rattan Chopra was formally arrested after obtaining permission from the Court of PS Vasant Kunj and sent to J/C. Thereafter request for conducting TIP of Rattan Chopra was made but he refused to take part in TIP proceedings. Thus, it is prosecution's own case that except disclosure statement of Rattan Chopra there was no other material against him. He was arrested by police officials of PS Vasant Kunj under Section 41.1 CrPC on 27.07.2009 and formally arrested in this case on 28.07.2009. there is not even a whisper in the report under Section 173 CrPC that after his arrest and till the time of production before the learned MM for TIP proceedings, he was kept in muffled face. The reason given by Rattan Chopra for his refusal to take part in TIP proceedings must have been recorded by learned MM.

13. In the case ***State of M.P. v. Mohanlal Soni (2000) 6 SCC 338***, the Supreme Court has observed as under:

"At the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceedings further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence, then the charge can be quashed.

In the normal course the documents in question in the present case could not have been prepared in anticipation that the respondent would have to face such charges on a future date. The documents being the orders of assessment or returns filed with the Income Tax Authorities on their face value supported the case of the respondent. There was no bar to consider the material on record in the case on hand, which was collected

during the course of investigation and produced before the Court."

14. The Hon'ble Supreme Court in the report ***Niranjan Singh Karam Singh Punjabi, v. Jitendra Bhimraj Bijja and Others AIR 1990 SC 1962*** held as under:

"It seems well settled that at the Ss. 227-228 stage i.e., stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

15. In the instant case, except the disclosure statement and refusal to take part in the TIP proceedings, there is absolutely no material against the respondent Rattan Chopra to connect him with the offence complained of. Thus, the learned Trial Court has rightly recorded that the prima facie there was no material against Rattan Chopra to charge him for the offences complained of.

16. The revision petition is dismissed.

PRATIBHA RANI, J.

JANUARY 20, 2016

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