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

% *Date of Decision: 8th September, 2016*

+ **CRL.REV.P. 330/2015**

STATE (GOVT OF NCT OF DELHI) Petitioner

Represented by: Ms.Manjeet Arya, APP for the
State

Versus

PRADEEP & ORS Respondents

Represented by: Ms.K.Singhal, Advocate with
SI Vivek Sharma, PS Gokul
Puri.
Gaurav, R-2 & Aakash, R-5 in
person.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. The State has invoked the revisional jurisdiction of this Court impugning the order dated 16th February, 2015 whereby all the respondents herein have been discharged by the learned trial Court.

2. FIR No.09/2013 PS Gokul Puri was registered under Sections 392/397/394/395/412/34 IPC. After the investigation was completed, charge-sheet was filed against five persons, namely, Pradeep, Gaurav, Vipin, Raju @ Mota and Akash @ Gola.

3. Since the case was triable by the Court of Session the same was committed. After hearing arguments on charge, all the five accused persons have been discharged by the learned trial Court for the reasons mentioned in para Nos.7 to 10 of the impugned order extracted hereunder:-

'7. In the initial complaint of the complainant, which formed

basis of the registration of the FIR, it is categorically stated that the assailants/robbers were 3/4 in number. How the IO had increased this number of robbers from 3/4 to 7 has nowhere been explained and is also not explained from the evidence collected or the record. This creates a very serious doubt about the investigation and prima facie culpability of the accused to the commission of the crime. It was the duty of the IO to prima facie establish before the Court that who were the four persons who had participated in commission of this crime. As out of the seven arrests in this case identity of the four has not been established by the IO by any means, the Court has no mode to reach at a conclusion which four of the five chargesheeted in this case are to go up for trial.

8. *Merely because, the accused had refused to join test identification parade, it cannot be said that there is sufficient material before the Court to frame charges against the accused because, TIP is only for the purpose of establishing to the IO that his investigation is on the right track as TIP is not a substantive piece of evidence.*

9. *The next piece of evidence which the prosecution seeks to rely upon is the alleged recovery of jeans which were allegedly looted in this incident. Here again, I find that recovery of these jeans was not effected at the instance of any of the accused facing trial. This recovery was effected at the instance of one Pawan Sharma. At the instance of this Pawan Sharma, 645 jeans had been recovered. However, there are two things which show that this recovery cannot link the accused to the commission of the present offence or be an evidence with regard to this case. The first is, that no recovery memo or copy thereof has been placed on record. Therefore, when the recovery is not being sought to be proved through any recovery memo, a mere stand of the IO that the recovery of the alleged looted articles was effected is not sufficient. Secondly, the recovery was not effected at the instance of any of the accused persons in the present case and the person at whose instance the recovery had been effect is neither a witness nor an accused in this case. Not only this, it is an admitted case of the prosecution that the jeans which were looted in this incident were 1500 jeans of blue colour. However, 645 jeans, which*

were recovered, were of black, blue and khakhi colour. Therefore, these jeans cannot be said to be the ones which were looted in the present incident.

10. Even otherwise, no TIP of these articles after their recovery was got conducted so that the owner of these jeans could recognize these jeans as the jeans which he had handed over to the complainant/victim and thus, as the jeans which were looted in the incident.'

4. Today during the course of hearing of this revision petition, learned APP for the State conceded that the observations made by the learned Additional Sessions Judge on the issue of recovery as well the number of offenders involved in the occurrence as well on the issue of seizure memo not being prepared and even the person at whose instance the recovery was effected being not cited as a witness are on the basis of material on record. If it is so, then on what basis the prosecution can claim that a prima facie case under Sections 392/397/394/395/412/34 IPC is made out so as to require interference by this Court in exercise of its revisional power.

5. Ms.Manjeet Arya, learned APP for the State submitted that in this case the accused persons have refused to take part in TIP. This issue has been dealt with by the learned ASJ observing that purpose of TIP is only to ascertain that investigation is on the right track and in this case though there were only 3-4 persons were stated to be involved by the complainant this number was increased to 7 by the IO.

6. Thus, merely because there is a refusal to take part in TIP, is not itself sufficient to hold that prima facie case is made out against the respondents herein. It is a case where the entire evidence collected by the prosecution even if taken as gospel truth remain unrebutted by the defence it cannot show even prima facie that the respondents herein had committed the

offences complained of.

7. In the case of Century Spinning & Manufacturing Co. Ltd. Vs. State of Maharashtra, 1972 CrL.L.J. page 329, the Supreme Court has held that the charge has not to be framed automatically and application of mind is necessary. In paragraph 16 of the judgment, following findings were arrived at:

“If, on the material, the Court comes to the conclusion that there is no ground for presuming, that the accused has committed an offence, then, it can appropriately consider the charge to be groundless and discharge the accused. The argument that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation of law. The order framing the charges does substantially effect the persons' liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case.”

8. In the instant case, learned ASJ has dealt with all the aspects of the matter and then arrived at the conclusion that no prima facie case is made out against any of the accused persons. The trial Court had the power to sift and weigh the evidence for the limited purpose to form an opinion whether a prima facie case is made out or not.

9. The material collected by the prosecution was hardly sufficient to put the accused persons on trial. Hence they have been rightly discharged in this case.

10. Finding no illegality, infirmity and perversity in the impugned order, the revision petition is dismissed.

PRATIBHA RANI, J.

SEPTEMBER 08, 2016

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