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

% *Date of Decision : September 07, 2016*

+ CRL.REV.P. 39/2015

STATE (GNCT) OF DELHI

..... Petitioner

Through: Ms.Manjeet Arya, APP for the State
with Inspector Bhushan Azad Spl.Cell

versus

SANJEEV SAWHNEY

..... Respondent

Through: Mr.Sahil Malik, Mr.Amandeep
Kadyan & Mr.Varun Kalia, Advs.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. In the case FIR No.45/2015 under Sections 406/420/468/471/120-B IPC read with Section 12 of the Passport Act PS Special Cell, charge-sheet was filed against four accused persons, namely, Vipin Sharma, Aman Alam, Bhupinder Singh and Sanjeev Sawhney.

2. After hearing the parties on the point of charge, vide order dated 30th May, 2013, learned CMM discharged all the accused persons in respect of offence under Sections 467/468/471 IPC. For the remaining offences, the accused were ordered to be charged for the following reasons:-

“25. Never the less, I am of the view that there is sufficient evidence available on record which raise grave suspicion against accused persons namely Vipin Sharma, Aman Alam, Bhupinder Singh and Sanjeev Sawhney in respect of offence u/s

474/120-B IPC as pursuant to criminal conspiracy hatched by them, some of them are prima facie shown to have been found in possession of counterfeit blank visa of British High Commission or fake visa stickers of embassy of Czech Republic with requisite knowledge of same being forged and the accused were intending to use the same as genuine documents. Counterfeit blank visa and fake visa stickers are documents purported to be issued by British High Commission and by Embassy of Czech Republic. Hence, prima facie case is made out against the aforesaid accused persons in respect of offences u/s 474/120-B IPC.

26. There are specific allegations appearing against accused Vipin Sharma and Aman Alam that they were found in possession of various passports more particularly the passports bearing fake visa stickers of embassy of Czech Republic. In this regard, requisite Sanction in terms of Section 15 of Indian Passport Act, has also been placed on record. Hence, I am of the view that prima facie case is made out against both the said accused in respect of offence u/s 12 of Indian Passport Act.”

3. Accused Sanjeev Sawhney (respondent herein) preferred a revision petition No.41/2013 impugning the order on charge. The learned ASJ vide impugned order dated 15th October, 2015 discharged him.
4. Feeling aggrieved by the order on discharge now the State is in revision with a prayer to set aside the order passed by learned ASJ and direct the respondent Sanjeev Sawhney to face trial in the above noted case.
5. Heard.
6. On behalf of the State it has been submitted that material on record was prima facie sufficient to charge the respondent herein for committing the offences. Hence the impugned order may be set aside.
7. On behalf of the respondent, Mr.Sahil Malik, Advocate while supporting the order passed by learned ASJ, submitted that the belated

statement made under Section 161 Cr.P.C. by the complainant was nothing but an afterthought and being inadmissible in evidence, could not have formed basis to charge the respondent herein.

8. I have perused the chargesheet and statements under Section 161 Cr.P.C. annexed with the revision petition filed by the State.

9. After hearing all the accused persons on charge, learned CMM, Central District dealt with the accusations against the respondent Sanjeev Sawhney in para No.21 of the order on charge as under:-

“21. As regards accused Sanjeev Sawhney, there is sufficient evidence available on record which prima facie raises grave suspicion against him as well. In this regard, it is relevant to refer to the supplementary statement dated 24.03.05 of complainant wherein he identified accused Sanjeev Sawhney to be the person who was found sitting in the office of accused Vipin Sharma and was introduced as senior officer of Canada Embassy by accused Vipin Sharma who further told the complainant that visa shall be arranged for him by accused Sanjeev Sawhney. Not only this, there is another statement u/s 161 Cr.P.C. of PW Sh. Rakesh Sunjea who has claimed that accused Sanjeev Sawhney was previously working in Thomas Cook and subsequently he shifted to Paul Merchant. He used to visit the office of accused Sanjeev Sawhney. During those visits, he came to know that accused Vipin Sharma also used to visit him and accused Sanjeev Sawhney had arranged some visa of France country for Vipin Sharma against some payment. It is mentioned in the charge-sheet that a sum of ₹1,00,000/- was found to have been deposited on 06.02.2004 at Paul Merchant Office, Chandigarh for Sanjeev Sawhney and the said amount was subsequently collected by Sanjeev Sawhney on 09.02.04 at Delhi office of Paul Merchant.”

10. Thereafter, learned CMM has dealt with the accusations against all the accused persons for the offence punishable under Sections 467/468/471 IPC and formed an opinion that the simple allegations about recovery of blank

visa and fake visa stickers from the possession of Co-accused Vipin Sharma, Aman Alam and Bhupinder Singh was not sufficient to charge them for the offence punishable under Sections 467/468/471 IPC.

11. The respondent herein Sanjeev Sawhney impugned the order on charge before the learned ASJ. The revision petition has been allowed by the learned ASJ mainly for the following reasons:-

(i) Supplementary statement of the complainant was allegedly recorded on 24th March, 2005 whereas in his complaint made about 17 months prior to the incident, the complainant did not utter a single word against Sanjeev Sawhney.

(ii) Supplementary statement cannot be relied upon in view of the judicial pronouncements in Parvinder Kaur Vs. Kawaljeet Kaur, 1999 (1) JCC Delhi 175.

(iii) No passport was recovered from Sanjeev Sawhney, who in his disclosure statement though stated that he handed over passport to Aparna Sharma or to some other agent but did not recollect the same.

(iv) The learned ASJ found it to be unbelievable that if some person had taken the said passport against some consideration to perform some work, how he would forget, to whom he had given the said passports. Further, during investigation, no effort was made to interrogate the said Aparna Sharma to verify whether respondent had given some passport to her or not.

(v) Finding the material against Sanjeev Sawhney to be not sufficient to make out a prima facie case, he was ordered to be discharged.

12. In the case State of Maharashtra Etc. Etc. Vs. Som Nath Thapa Etc. JT 1996 (4) SC 615, one of the question of law to be examined by the Apex Court was “When can charge be framed?”. After reproducing Sec. 227, 228

in so far as session trial is concerned and Sec. 239, 240 relatable to the trial of warrant cases, in para 29 to 33 of the judgment held as under :-

“29. Before advertng to what was stated in Antulay's case, let the view expressed in State of Karnataka Vs. L. Muniswamy, 1977(3) SCR 113 be noted. Therein, Chandrachud, J. (as he then was) speaking fore a three Judge Bench stated at page 119 that at the stage of framing charge the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasised.

30. What was stated in this regard in Stree Alyachar Virodhi Parishad' case, which was quoted with approval in paragraph 79 of State of West Bengal Vs. Mohd. Khalid, 1995 (1) SCC 684 is that what the Court has to see, while considering the question of framing the charge, is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into.

31. In Antulay's case, Bhagwati, CJ, opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of “prima facie” case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence.

32. Let us note the meaning of the word “presume”. In Black's Law Dictionary it has been defined to mean “to believe

or accept upon probable evidence”. (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law “presume” means “to take as proved until evidence to the contrary is forthcoming”, Stroud's Legal Dictionary has quoted in this context a certain judgment according to which “A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged.” (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition.

33. *The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge probative value of the materials on record cannot be gone into, the materials brought on record by the prosecution has to be accepted as true at that stage.”*

13. Reverting to the case in hand, the material collected by the prosecution against Sanjeev Sawhney is that co-accused Vipin Sharma disclosed about involvement of Sanjeev Sawhney who was working at Paul Merchant, a forex transfer company at World Trade Centre, Connaught Place, Delhi. Apart from his identification by the complainant, the prosecution has also collected evidence to establish that co-accused Vipin Sharma made part of payment to Sanjeev Sawhney through office of Paul Merchant at Chandigarh. This led to seizure of cash book, day book, ledger and other relevant documents of Chandigarh & Delhi office of Paul Merchant were collected. The investigating agency on scrutiny of documents noticed that an

amount of ` one lakh was deposited on 6th February, 2004 at Paul Merchant office, Chandigarh for Sanjeev Sawhney and the same amount was collected by accused Sanjeev Sawhney on 9th February, 2004 at Delhi office of Paul Merchant.

14. For the purpose of charge, as co-accused, the above material was prima facie sufficient to put Sanjeev Sawhney on trial. The learned ASJ while allowing the revision petition appears to have made a roving inquiry though the material against the respondent Sanjeev Sawhney is giving rise to a grave suspicion against him especially that the amount allegedly deposited by the co-accused with Paul Merchant Office, Chandigarh was withdrawn by him.

15. The impugned order being not sustainable in the eyes of law is hereby set aside and the order passed by the learned CMM whereby respondent herein was ordered to be charged, is restored.

16. Since counsel for the parties are aware of the next date of hearing before the learned Trial Court, the respondent herein is directed to appear before the learned trial Court on September 29, 2016.

17. Learned Trial Court shall take up the file on that date for further directions.

18. Copy of the order be given dasti to the parties, as prayed.

PRATIBHA RANI, J.

September 07, 2016

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