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

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Date of Decision: September 16, 2016

+ CRL.REV.P. 469/2015

SHIV KUMAR @ SHIVA

..... Petitioner

Represented by: Mr.Abhay Kumar, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Represented by: Mr.Kusum Dhalla, APP for the
State with ASI Mahander
Parkash PS Malviya Nagar

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

Crl.M.A. No.10693/2015

1. By way of this application filed under Section 482 Cr.P.C., the petitioner has requested for recalling the Trial Court Record from the Court of Learned ASJ, Tis Hazari Courts, Delhi in FIR No. 827/2014, under Section 364A/328/120B/34 IPC, registered at PS Mianwali Nagar, Delhi.

2. Since the copy of chargesheet, FIR and the statement of witnesses under Section 161 Cr.P.C. have already been annexed, there is no need to summon the TCR.

3. The application is dismissed.

CRL.REV.P. 469/2015

1. The petitioner is aggrieved by the order dated April 10, 2015 whereby he has been ordered to be charged along with his co-accused for committing offences punishable under Section 120B/364A r/w Section 120/328 IPC.

2. Learned counsel for the petitioner has referred to the statement of the victim Islamuddin to show that he was not present when victim was allegedly brought to the room by Sunita and Pooja nor he had administered the tea allegedly containing some intoxicant. As per the said statement of the victim he received a call from a lady namely Sunita who was known to him. He was asked by her to reach near park Rishi Nagar, Rani Bagh. When he reached there, Sunita along with another lady Pooja came on scooty. He was sent alongwith Pooja on the scooty and Sunita followed them on foot. When Pooja brought him to the room he was offered a cup of tea. Thereafter he started losing consciousness and his vision was also affected to the extent that he was unable to see clearly. When he gained consciousness he found 3-4 boys and 3-4 girls with one sikh person talking to each other and addressing one lady as Sardarni Aunty and others as Johny, **Shiva**, Mukesh, Priya @ Jyoti, Pooja, Rana, Silki and Riya. The Sardarni Aunty informed him that he had done bad act with Pooja and his video film has been prepared. Unless he arrange and pay ₹10 lakhs to them he would not be released. After some negotiations the demand was brought down to ₹3 lakhs threatening him that on his failure to pay, the video will be played on TV to defame him. Thereafter he called his son Murad Ali to arrange for ₹3 lakhs and reach at the place to be informed later after his son is able to arrange the money demanded. After the money was arranged, as per direction of the accused persons he called his son to the place decided by the accused persons, informing him about the description of the person to whom the money was to be given. After some time the persons who were keeping a watch on him, received a phone call that **Shiva** has been caught by the police. On hearing this all the persons present in the room left him there and

fled threatening him not to disclose anything to any person. Thereafter he took an auto and reached home. He also informed his son Murad Ali and thereafter reported the matter to the police. He also informed the police that the accused persons threatened to kill him and that he could identify all of them.

3. The contention raised on behalf of the petitioner is that even on the basis of the above statement of the complainant neither **Shiva** was armed nor he had abducted the complainant Islamuddin or administered any intoxicant to him. Therefore, there is no material to frame charge against him for commission of the offence punishable under Section 364A/328/120B IPC.

4. Learned counsel for the petitioner has relied upon AIR 2002 SCC 3390 Rajendra alias Raju, Vs. State of Maharashtra, 2015(3) JCC 1818 Rajbir & Anr. Vs. State & 2009 (3) JCC 2202 State of NCT of Delhi Vs. Shiv Charan Bansal & Ors. in support of his contentions.

5. While relying on 2009 (3) JCC 2202 State of NCT of Delhi Vs. Shiv Charan Bansal & Ors. learned counsel for the petitioner has relied upon para 43 of the report wherein the principles for guiding criminal Courts while passing an order on charge have been laid down. He has submitted that if two views are equally possible and the Court is satisfied that the evidence produced is not sufficient to give rise to a grave suspicion the Court can discharge the accused.

6. In para 43 of the report in Shiv Charan Bansal's case (Supra) the principles laid down by the Supreme Court in the decision reported as (1979) 3 SCC 4 Union of India Vs. Prafulla Kumar Samal were extracted as under:

'43. In Union of India v. Prafulla Kumar Samal MANU/SC/0414/1978 : 1979CriLJ154 the following principles were explained as guiding the function of the criminal court while passing an order on charge (SCC, p.9):

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

7. Suffice it is record here that the principles laid down above by the Supreme Court in Prafulla Kumar Samal's case (Supra) and followed by the High Court in Shiv Charan Bansal's case (Supra) do not help the accused **Shiva** in any manner as there is enough material against him to prima facie make out a case for framing the charges under Section 364A/328/120B IPC.

8. The learned counsel for the petitioner was required to show to the Court as to how the evidence adduced in his case does not give rise to grave suspicion, which he failed to do.

9. The other two decisions reported as AIR 2002 SCC 3390 Rajendra alias Raju, Vs. State of Maharashtra & 2015(3) JCC 1818 Rajbir & Anr. Vs. State are in appeal dealing with the merit of the case whereas in the case in hand the petitioner is impugning the order on charge.

10. Conspiracies are hatched in secrecy and proof of offence of conspiracy can be gathered by some kind of physical manifestation or agreement.

11. All the accused persons herein have been charged for the substantive offence under Section 364A/328 read with Section 120 IPC. The presence of the petitioner herein at the place where Islamuddin was kept as hostage, his video film was prepared, he was called upon to arrange the amount demanded for his release as well threatened to pay the amount demanded or the video film allegedly showing him doing bad act with Pooja would be released on T.V. Thereafter the petitioner **Shiva** was allegedly caught while collecting the ransom amount prima facie justifies framing the charge against him.

12. It is not a case where the accusations against him are only giving rise to some suspicion but as per prosecution case he was part of conspiracy and

was actively involved when caught by the police while collecting the amount demanded.

13. In the instant case statement of the victim Islamuddin and apprehension of the petitioner while collecting the ransom was sufficient to charge him for the offence punishable under Section 364A/328 read with Section 120 IPC as well for the offence punishable under Section 120B IPC.

14. Finding no illegality or infirmity in the impugned order the revision petition is dismissed.

15. No costs.

SEPTEMBER 16, 2016

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PRATIBHA RANI, J.

