

\$~

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.REV.P 97/2015

Order reserved on: 21st November, 2017

Order pronounced on: 24th November, 2017

STATE

...Petitioner

Through: Mr. Ashok Kr. Garg, APP for the State

versus

DHANANJAY @BAROOD @ PATHAN

...Respondent

Through: Mr. U.A. Khan, Adv. with Mr. Sunil
Sagar and Mr. Shahrukh Khan, Advs.

CORAM:

% **HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

1. The present Revision petition is filed by the petitioner under Section 397 and 401 read with Section 482 of The Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') to *set aside the order dated* 24.11.2014 passed by the Additional Session Judge (hereinafter referred 'ASJ'), Shahdara/Karkardooma Courts in FIR No. 243/2014, under Section 392/ 397/ 34 of the Indian Penal Code, 1860 (hereinafter referred 'IPC') whereby the respondent was discharged from the offences under Section 392/ 397/ 34 IPC registered at Police Station Jagatpuri.
2. The brief facts of the present case are that on 24.04.2014, the complaint was lodged by one Ms. Deepti Uppal alleging that on 24.04.2014 around 10.05am while she was buying flowers outside the temple, two persons riding on the motorcycle without wearing

helmet came from the side of the Vijay Chowk, and snatched her gold chain. As they fled away towards the Veer Bazar, she ran after them but the pillion rider showed her something like pistol due to which she withdrew chasing. Thereafter, on 28.04.2014, the respondent was arrested and his disclosure statement was recorded. The co-accused Shakil was arrested in another FIR and was interrogated by the Investigating Officer who made disclosure statement that they have sold the gold chain. Since the complaint showed her inability to identify accused, he was released from the present case. The petitioner refused to take part in the TIP proceedings and was charge-sheeted for offence under Section 392/397/34 IPC. The cognizance was taken by the Trial Court and vide order dated 24.11.2014, the respondent herein was discharged of all charges. Hence, the present petition.

3. The learned counsel for the petitioner contended that the Trial Court had erred in passing the said order as the same is based on conjectures and surmises; that the statement of the complainant, refusal to take part in TIP proceedings as well as the other corroborating evidence is sufficient to frame charges against the respondent; that at the stage of framing of charges, the court cannot examine or assess in detail the material placed on record by the prosecution; that to substantiate its case, he had placed reliance on *State of Maharashtra vs. Priya Sharan Maharaj* and *State of Delhi vs. Gyan Devi & ors.* reported in *AIR 2001 SC 40*. At this juncture, the said order is liable to be set aside.

4. Per contra, the learned counsel for the respondent contended that the Trial Court had passed the said order after considering all the materials placed on record, and therefore it suffers from no infirmity; that apart from disclosure statement of the respondent, there is no other evidence against the respondent; that the valid ground for not participating in the TIP proceedings has been explained by the respondent; that the petitioner has give three contradictory statements with regard to the identification of the accused(s)/respondent; that the story of the prosecution is solely based on the assumptions of the disclosure statement, as to who was driving the bike and who was the pillion driver; that on the basis of such vagueness in the statement of the prosecution, the present petition is not maintainable.
5. The submissions made by the both the parties have been considered and the records have been perused.
6. Before adverting to the question raised in the revision petition for and against framing of charges under different provisions, it has to be clearly kept in view that a revisional Court must not interfere with the findings of a Trial Court on the ground of insufficiency or otherwise of the material on record, so as to substitute its own opinion unless some patent perversity or glaring illegality is brought to the notice of the Court.

In *State vs Siddarth Vashisth & Manu Sharma* reported in 2001 *CriLJ 2404*, it was observed by this court that:

“31. If upon consideration of the material on record, documents and surrounding facts and circumstances of the case the Trial Judge considers that there are no sufficient grounds for proceeding against an accused he is under duty to order his discharge under Section 227 of the Code of Criminal Procedure. However, if upon the consideration of the material on record the Judge is of the opinion that there are grounds for presuming that the accused has committed the offence, he is under a legal obligation U/S 228 of the Code of Criminal Procedure to frame a charge against him and put him on trial. The law as to under what circumstances the Courts should pass an order under Section 228 of the Code for framing a charge and on what ground a discharge should be ordered under Section 227 of the code has been the subject matter of deep deliberations by the High Courts as well as Apex Court in a number of cases. Leading judgments on the question are in *Century Spinning & Manufacturing Co. Ltd. Vs. The State of Maharashtra*, 1972 *Crl. L.J.* 329, *Malkhan Singh & Another Vs. The State of Uttar Pradesh*, , *State of Bihar Vs. Ramesh Singh*, *Union of India Vs. Prafulla Kumar Samal & Another*, , *Rambilas Singh*

& Others Vs. State of Bihar, , Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijja & Others, , Stree Attyachar Virodhi Parishad Vs. Dilip Nathumal Chordia & Another, , State of Maharashtra etc. Vs. Som Nath Thapa etc., 1996 Crl. L.J. 2448, Satish Mehra Vs. Delhi Administration & Another, 1996 (5) SCALE 523 and Sumitra Banik Vs. State of West Bengal,..”

7. In the light of the principles governing the discharge of an accused under 227 of the Code of Criminal Procedure, it is observed by this court that during the course of investigation, the complainant in her statement failed to give the description of the person who allegedly committed the offence. More so, the description of the weapon alleged to be used by the respondent during the time of commission of the offence was also not stated by her. Further, nothing incriminating was recovered from the respondent at the instance of the police officials during investigation. As per the facts and circumstances of the present case, the prosecution failed to establish the respondent to be the perpetrator of the alleged offences and completely based their case on the statement of the complainant and also on the basis of the disclosure statement. It is a well settled proposition of law that the mere disclosure statement is not admissible in law. In **Anita Dahiya vs. State** reported in **1998 SCC Del 514**, it was held that “15. The report made by the police u/Sec. 173 of the Code is not per se legal evidence of the facts stated therein. The report is the conclusion drawn by the

Investigating Officer to proceed against an accused person on the basis of material collected during investigation. This report in itself thus is not material for forming the opinion to proceed against a person. A disclosure statement made by an accused person in itself also is not admissible even against the maker thereof and is also not admissible against a co-accused...”

8. In the present case, it is found that despite complaining about the alleged incident and making statements in that regard, the prosecution has failed to establish the case against the respondent and the scales weighing the material on record are not evenly balanced but are clearly tilted in favour of the respondent for the reason that for entertaining a suspicion even the Court must have some material on record. There is no substantive piece of evidence against the respondent as well as no recovery of snatched chain or weapon was recovered during the investigation and even if the case in hand is taken forward, no fruitful purpose will be served in the interest of justice and will only amount to sheer waste of time. Baseless suspicion, imaginary inferences and groundless conjectures are to be discarded by a discerning judicial eye. Therefore, no interference in the impugned order passed by the Trial Court is called for as the same is a well explained order.
9. Hence, the petition is accordingly dismissed.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 24 , 2017 gr//