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

DECIDED ON : 29th MARCH, 2017

+ **CRL.M.C. 1637/2016 & CRL.M.A.No.6993/2016**

RAJEEV SHARMA

..... Petitioner

Through : Mr.Ravinder Tyagi, Advocate with
Ms.Kanishka Tyagi, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through : Mr.Arun Kumar Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner to challenge the legality and correctness of an order dated 09.09.2015 of learned Trial Court by which cognizance for commission of offence punishable under Section 380 IPC and Section 25 Arms Act was taken against the petitioner. Status report in on record.

2. I have heard the learned counsel for the parties and have examined the file. On 18.10.2009, DD No.7A came into existence at 2.27 a.m. (night) at PS Mianwali Nagar on getting information that one Rajeev Sharma has been admitted at Bhatia Global Hospital after sustaining bullet injuries. The investigation was assigned to ASI Ranveer Singh who along with Const.Lokender reached the spot. After recording victim Rajeev Sharma's statement, the Investigating Officer lodged First Information Report for commission of offence under Section 337 IPC. During

investigation, it was found that Sachin Sharma had stolen DVBL gun from Manpreet's residence and Rajeev Sharma had sustained injuries by the said gun. Section 380 IPC and Section 25 Arms Act were added in the FIR. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against Sachin Sharma for commission of the aforesaid offences under Sections 380/338 IPC and 25 Arms Act.

3. Learned Metropolitan Magistrate by an order dated 09.01.2013 took cognizance under Section 190 (1)(b) Cr.P.C. and summoned Sachin Sharma to face trial. When arguments on charge on 12.03.2015 were in progress, the trial Court on APP's request sought a report from the concerned SHO whether any criminal proceedings were initiated against Rajeev Sharma (the present petitioner / injured). SHO in his report informed that no criminal proceedings have been initiated against the complainant Rajeev Sharma. The Trial Court on perusal of the statement under Section 161 Cr.P.C. of the owner of the gun i.e. Manpreet Singh observed that the gun was taken away by Rajeev Sharma and offence under Section 380 IPC as well as 25 Arms Act was made out against him. Since the police had not taken any action against Rajeev Sharma, a report was called from DCP (West) if any action was intended to be taken against Rajeev Sharma. Subsequently, it was informed by DCP that supplementary charge-sheet was going to be filed against Rajeev Sharma. On 04.08.2015, supplementary charge-sheet was filed and by an order dated 09.09.2015 the Metropolitan Magistrate took cognizance and summoned Rajeev Sharma to face trial. Being aggrieved and dissatisfied, the instant petition has been filed.

4. On perusal of the statements of the prosecution witnesses, I find no sufficient material against the petitioner to be summoned for commission of offences punishable under Section 380 IPC and Section 25 Arms Act. Petitioner himself is a victim / injured in the occurrence. Owner of the gun did not lodge any complaint about its theft against any individual. The licence holder of the gun was Anant Bihari Singh. In 161 Cr.P.C. statement recorded on 18.12.2009, he did not suspect the petitioner's involvement in the taking away of the gun. His supplementary statement was recorded under Section 161 Cr.P.C. on 30.06.2011 in which he disclosed that after locking his licensed gun in the almirah in safe custody at the residence of his employer Manpreet Singh, he had gone to his house. Subsequently, he came to know that Sachin Sharma, Manpreet's friend had stolen the said gun and Rajeev Sharma had sustained gun shot wound. The petitioner was not named by him.

5. Manpreet Singh in 161 Cr.P.C. statement recorded on 18.10.2009 revealed that on the day of incident, Rajeev Sharma and Sachin Sharma had visited him. He further informed that with an intention to burst crackers, Rajeev Sharma took away the gun of his gun-man A.B.Singh and kept it in Sachin's car. At around 12.15 (night) when he got an information on phone that Rajeev Sharma had sustained bullet injuries; he went to the hospital. On enquiry from Rajeev Sharma, he came to know that the gun was taken away with an intention to burst crackers. However, he sustained bullet injuries accidentally when the gun was being handled by Sachin.

6. Statement of Manpreet Singh does not reveal if the petitioner had deliberately and intentionally taken the gun out of his possession with any specific purpose. Apparently, it was taken by him to his knowledge.

Manpreet did not lodge any complaint any time for its theft. Similarly, A.B.Singh also never filed any complaint against any individual for the theft of his gun. There was thus no cogent and substantial material before the Trial Court to ascertain that the gun in question was stolen by the petitioner to summon him for commission of offence punishable under Section 380 IPC and Section 25 Arms Act.

7. True, the investigation carried out by the Investigating Officer is not up-to-the mark. Initially, Rajeev Sharma did not disclose if he had sustained bullet injury due to accidental firing by the gun at the time of his handling in the car. Sachin Sharma got him admitted at Bhatia Global Hospital. Subsequently, in the statement forming basis of registration of FIR, Rajeev Sharma introduced a new story stating that the injuries by bullet were sustained by him 'accidentally'. Apparently, the complainant did not present true facts. The Investigating Officer did not investigate as to how and under what circumstances, the gun in question came to Sachin Sharma's possession, how and in what circumstances it was used; how and in what manner Rajeev Sharma sustained bullet injuries. He did not verify if the licensed gun was locked in an almirah and how and in what situation, it was taken out of the locked almirah, and if so, by whom and for what purpose. Seemingly, Manpreet has also not given true facts. He is not expected to let the licensed gun to be taken away by his friend so casually. Only when it transpired that the gun in question has been used resulting in causing injuries grievous in nature to Rajiv Sharma, the police machinery came into motion. Needless to say that attempt has been made by the Investigating Officer and even the complainant and PWs - Manpreet and A.B.Singh to exonerate the perpetrator of the crime. Senior police officers are expected to look into the

matter and to find out as to how Rajeev Sharma had sustained injuries and also, who was real perpetrator of the specific crime.

8. Upon completion of investigation, a charge-sheet under Sections 380/338 IPC was filed only against Sachin Sharma. At no stage, Investigating Officer moved any application before the learned Trial Court for further investigation.

9. Since there was no cogent and substantial material before the Trial Court, the impugned order summoning the petitioner for commission of offences under Section 380 IPC and Section 25 Arms Act cannot be sustained and is set aside.

10. The petition stands disposed of. Pending application also stands disposed of.

11. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

MARCH 29, 2017 / tr