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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: July 20, 2017

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CRL.REV.P. 427/2017

SHAHJAHAN @ SHAHJAN SHEIKH @ TUNU Petitioner

Through: Mr.Aditya Deshwal, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State with SI Anand
Singh, Spl. Cell, NDR, Lodhi
Colony

PRATIBHA RANI, J. (Oral)

ORDER

20.07.2017

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CrI.M.A.9708/2017

1. For the reasons stated in the application, delay of 42 days in filing the petition is condoned.
2. The application is disposed of.

CRL.REV.P. 427/2017

1. This revision petition has been filed under Section 397/401 Cr.P.C. assailing the order dated 16th January, 2017 whereby the petitioner/accused has been ordered to be charged for committing offence punishable under Section 120-B IPC read with Section 489B/489C IPC.

2. Learned counsel for the petitioner submitted that the charge framed against the present petitioner is groundless. The calls could not have been intercepted without permission which in itself is an offence under the Indian Telegraph Act, 1885.

3. Learned counsel for the petitioner is also seeking discharge on the ground that the case against the present petitioner is based on the disclosure statement made by the co-accused which in itself is not admissible in evidence. It has also been contended that the FIR in this case has been registered on 20th June, 2013 whereas the petitioner/accused Shahjahan @ Shahjan Sheikh @ Tunu was arrested on 25th March, 2013 after investigation in this case has already been completed. Supplementary charge-sheet has been filed against the present petitioner and further investigation was conducted under the orders of the Court. The supplementary charge-sheet was filed on 15th December, 2016 against the petitioner/accused Shahjahan @ Shahjan Sheikh @ Tunu as per which five deposit slips were used to deposit the amount in the account of the petitioner/accused by the co-accused.

4. Learned counsel for the petitioner has also referred to the discrepancy in the deposit slip seized by the investigating agency and date of telephonic conversation. It has been contended that the material collected by the prosecution against the present petitioner/accused was not sufficient to frame the charge against him, hence he may be discharged.

5. Learned APP for the State has submitted that as per disclosure statement of the co-accused he used to deposit money in the Axis bank

account of the present petitioner/accused Shahjahan @ Shahjan Sheikh @ Tunu and the petitioner/accused used to provide fake currency notes. Second bank account with ICICI bank No.0471201502610 is also in the name of the petitioner/accused and the nature of the transactions in these two accounts show that these accounts were being used for pumping and circulation of FICN in the country.

6. This Court has perused the record including the evidence collected by the prosecution and reflected specifically in the supplementary charge-sheet filed by the petitioner.

7. The main contention raised on behalf of the petitioner is about the interception of call being done in contravention of the provisions of Section 25 of the Indian Telegraph Act, 1885 and that the same is inadmissible. This issue has been dealt with by the Supreme Court in the decision reported as **R.M.Malkani vs. State of Maharashtra** AIR 1973 SC 157 as under:

“15. Four questions were canvassed in this appeal. The first contention was that the trial Court and the High Court erred in admitting the evidence of the telephonic conversation between Dr. Motwani and the appellant which was recorded on the tape. The evidence was illegally obtained in contravention of Section 25 of the Indian Telegraph Act and therefore the evidence was inadmissible. Secondly, the conversation between Dr. Motwani and the appellant which was recorded on the tape took place during investigation inasmuch as Mugwe asked Dr. Motwani to talk and therefore the conversation was not admissible Under Section 162 of the CrPC. The third contention was that the appellant did not attempt to obtain gratification. Fourthly, it was said that the sentence of six months imprisonment should be interfered with because the appellant has already paid Rs.

10,000 as fine. The appellant suffered heart attacks and therefore the sentence should be modified.

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17. Section 25 of the Indian Telegraph Act 1885 states that if any person intending (b) to intercept or to acquaint himself with the contents of any message damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thin whatever, being part of or used in or about any telegraph or in the working thereof he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both. "Telegraph" is defined in the Indian Telegraph Act in Section 3 to mean any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means.

18. Counsel for the appellant submitted that attaching the tape recording instrument to the telephone instrument, of Dr. Motwani was an offence Under Section 25 of the Indian Telegraph Act. It was also said that if a Police Officer intending to acquaint himself with the contents of any message touched machinery or other thing whatever used in or about or telegraph or in the working thereof he was guilty of an offence under the Telegraph Act. Reliance was placed on rule 149 of the Telegraph Rules which states that it Shall be lawful for the Telegraph Authority to monitor or intercept a message or messages transmitted through telephone, for the purpose of verification of any violation of these rules or for the maintenance of the equipment. This Rule was referred to for establishing that Only the Telegraph Authorities could intercept message under the Act and Rules and a Police Officer could not.

19. In the present case the High Court held that the telephone call put by Dr. Motwani to the appellant was tapped by the

Police Officers, and, therefore, there was violation of Section 25 of the Indian Telegraph Act. But the High Court held that the tape recorded conversation was admissible in evidence in spite of the violation of the Telegraph Act.

20. The Police Officer in the present case fixed the tape recording instrument to the telephone instrument with the authority of Dr. Motwani. The Police Officer could not be said to intercept any message or damage or tamper or remove or touch any machinery within the meaning of Section 25 of the Indian Telegraph Act. The reason is that the Police Officer instead of hearing directly the oral conversation between Dr. Motwani and the appellant recorded the conversation with the device of the tape recorder. The substance of the offence Under Section 25 of the Indian Telegraph Act is damaging, removing, tampering, touching machinery battery line or post for interception or acquainting oneself with the contents of any message. Where a person talking on the telephone allows another person to record it or to hear it it can-not be said that the other person who is allowed to do so is damaging, removing, tampering, touching machinery battery line or post for intercepting or acquainting himself with the contents of any message. There was no element of coercion or compulsion in attaching the tape recorder to the telephone. There was no violation of the Indian Telegraph Act. The High Court is in error on that point.

21. This Court in Shri N. Sri Rama Reddy etc. v. Shri V. V. Giri MANU/SC/0333/1970 : [1971]1SCR399 , Yusufalli Esmail Nagree v. The State of Maharashtra MANU/SC/0092/1967 : 1968CriLJ103 and S. Pratap Singh v. The State of Punjabi MANU/SC/0272/1963 : (1966)ILLJ458SC accepted conversation or dialogue recorded on a tape recording machine as admissible evidence. In Nagree's case the conversation was between Nagree and Sheikh. Nagree was accused of offering bribe to Sheikh."

8. The principles governing discharge under Section 239 Cr.P.C.

and for framing of charge under Section 240 Cr.P.C. have been considered by the Supreme Court in catena of judgment. In the decision reported as **Sheoraj Singh Ahlawat & Ors. vs. State of U.P. & Anr.** 2013 Cri.LJ 331, in a matrimonial dispute, the discharge was sought by the husband and parents-in-law contending that the provisions of Section 498A IPC is a much abused provision to falsely implicate, harass and humiliate the husband and his relatives. Discharge was prayed on the ground that there was an inordinate delay in filing the complaint and the statements of the witnesses recorded under Section 161 Cr.P.C. were contradictory in nature and the two Investigating Officers found the allegations to be false. Thus, there was no reason for the Court to believe the story set up by the complainant/wife. While negating the contentions raised by the husband and in-laws it was held:

“10. The case at hand being a warrant case is governed by Section 239 of the Code of Criminal Procedure for purposes of determining whether the accused or any one of them deserved to be discharged. Section 239 is as under:

239. When accused shall be discharged.

If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

11. A plain reading of the above would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of Section 239 Code of Criminal Procedure and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in *Onkar Nath Mishra and Ors. v. State (NCT of Delhi)* and Anr. MANU/SC/0134/2008 : (2008) 2 SCC 561. That too was a case in which a complaint under Sections 498-A and 406 read with Section 34 of the Indian Penal Code was filed against the husband and parents-in-law of the complainant-wife. The Magistrate had in that case discharged the accused under Section 239 of the Code of Criminal Procedure, holding that the charge was groundless. The complainant questioned that order before the Revisional Court which directed the trial Court to frame charges against the accused persons. The High Court having affirmed that order, the matter was brought up to this Court. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:

11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has

been made out. At that stage, even **strong suspicion** founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

(Emphasis supplied)

12. Support for the above view was drawn by this Court from earlier decisions rendered in *State of Karnataka v. L. Muniswamy* MANU/SC/0143/1977 : 1977 Cri.LJ 1125, *State of Maharashtra and Ors. v. Som Nath Thapa and Ors.* MANU/SC/0451/1996 : 1996 Cri.LJ 2448 and *State of M.P. v. Mohanlal Soni* MANU/SC/0434/2000 : 2000 Cri.LJ 3504. In *Som Nath's* case (*supra*) the legal position was summed up as under:

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 a 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.

(Emphasis supplied)

13. So also in *Mohanlal's* case (*supra*) this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the Court *prima facie* finds that there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in *Mohanlal's* case (*supra*) is in this regard apposite:

8. The crystallized judicial view is that at the stage of framing charge, the court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude

whether the materials produced are sufficient or not for convicting the accused.'

9. After summarizing the legal position on the subject, the Apex Court held that whether or not the allegations are true, is a matter which cannot be determined at the stage of framing of charge. Any such determination can take place only at the conclusion of the trial. While answering the contention of the petitioner that Section 498A IPC is a much abused provision and declining the prayer for discharge, it was observed as under:-

“Whether or not those allegations are true is a matter which cannot be determined at the stage of framing of charges. Any such determination can take place only at the conclusion of the trial. This may at times put an innocent party, falsely accused of commission of an offence to avoidable harassment but so long as the legal requirement and the settled principles do not permit a discharge the Court would find it difficult to do much, conceding that legal process at times is abused by unscrupulous litigants especially in matrimonial cases where the tendency has been to involve as many members of the family of the opposite party as possible. While such tendency needs to be curbed, the Court will not be able to speculate whether the allegations made against the accused are true or false at the preliminary stage to be able to direct a discharge.”

10. In the instant case, perusal of the chargesheet shows that the investigation revealed the present petitioner Shahjahan to be the master mind of the syndicate dealing in FICN. Their calls were incepted, the language used by them decoded, the recoveries effected pursuant to the disclosure statement made by the co-accused as well

from the petitioner and the cash transactions in his bank accounts.

11. The material collected during investigation has been detailed in the chargesheet (as reflected on page Nos.54 to 58 of this petition). It is not necessary to reproduce all the details of the material against the present petitioner for the reason that it is not a case based only on disclosure statement as contended before this Court so as to hold that charge against him is groundless.

12. Since the order impugned does not suffer from any illegality or infirmity, the review petition is hereby dismissed.

13. Any observation made herein above is only for the purpose of dealing with the contentions raised on behalf of the petitioner and shall not be deemed to be an expression on the merits of the case by the learned Trial Court at any stage.

CrI.M.A.9709/2017

In view of the above, the application is dismissed as infructuous.

PRATIBHA RANI, J.

JULY 20, 2017

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