

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

% Judgment reserved on: 10th August, 2018
Judgment delivered on: 30th October, 2018

+ CRL.REV. P. 476/2016

MAJOR DHARMINDER SINGH Petitioner

versus

STATE OF DELHI NCT Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. K.K. Manan, Sr. Advocate with Mr. Rajeshwar Dagar and
Mr. Varun Rai Sharma, Advocates.

For the Respondent: Mr. Panna Lal Sharma, APP for the State.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

CRL.REV. P. 476/2016 & CRL.M.A.10806/2016 (stay)

1. Petitioner impugns order-on-charge dated 31.03.2016, whereby, the Trial Court has held that there is enough material to frame charges against the petitioner under Sections 120B IPC, 365 read with section 120B IPC, 395 read with Section 120B IPC for criminal conspiracy for dacoity and Sections 29, 54 and 59 of the Arms Act.

2. Petitioner is an officer serving in the Indian Army.

3. The allegations in the FIR are that the complainant – Prabhay

Mahto was employed in the Accounts Department in Alok Steel Company, District Raigarh, Jharkhand. On 05.09.2015, his employer instructed him to travel to Delhi on 07.09.2015 along with one Lakshmi Singh. The employer informed him that they had to carry some valuables. On 07.09.2015, they travelled from Raigarh, Jharkhand to Delhi by train. When the train reached Ghaziabad station, Brajesh Pandey, an employee working in Gurgaon office called them up to inquire about their location. The train reached New Delhi Railway Station at about 1:30 pm. The complainant – Prabhay Mahto and Lakshmi Singh were received at the Station by Vijay Mishra and Sunil Driver.

4. All four of them sat in a Duster Car in which Brajesh Pandey was already sitting. As per the complainant, Sunil Driver was sitting on the driver seat, Brajesh Pandey was sitting on the front passenger seat, the complainant was sitting on the rear seat with Lakshmi Singh on his right and Vijay Mishra on his left. It is alleged that when they left from the Railway Station at about 2 pm, one motorcycle came from behind and intercepted their car. One person got off from the motorcycle and was carrying a wireless set. He is alleged to have pushed Sunil driver inside and sat on the driver side. Another person came from the right side and took out Brajesh Pandey from the car and took him to a car standing behind their vehicle. Thereafter, one Sikh gentleman came and sat in the front passenger seat. Thereafter, one more person, who was carrying a pistol, came and sat on the rear

side while pushing Lakshmi Singh on to the complainant. The person is alleged to have taken the mobile phones of the complainant, Sunil and Lakshmi Singh and removed their SIMs. Thereafter, both the vehicles are alleged to have gone to a deserted place under Geeta Colony Flyover and asked all the persons to step down. They were thereafter taken to a pit and made to sit down and threatened that if they looked up they will be shot. After some time, when they looked up they found that the place was deserted. Thereafter, they called the police and lodged a complaint.

5. After investigation, charge sheet has been filed. As per the charge sheet, suspicion fell on Sunil Driver. He was interrogated. During interrogation, Sunil driver is alleged to have confessed that he had planned this dacoity with one Shardha and 3-4 more boys. Substantial amount of cash was recovered from Sunil. Investigation led the police to one Beant Singh from whose possession, it is alleged, that some money as well as one pistol and one revolver were recovered. The pistol that was recovered from Beant Singh belongs to the petitioner. On an inquiry, Beant Singh also produced the arms licence of the petitioner. As per the prosecution, apart from the fact that the pistol of the petitioner was recovered from Beant Singh, there were SMSs connection between the petitioner, Beant Singh and co-accused Sandeep.

6. As per the charge sheet, it is stated that at the time of the commission of the offence, the location of the petitioner was in

Jammu & Kashmir, where he was posted. As per the charge sheet, there was no evidence to show criminal conspiracy for the commission of offence under sections of Indian Penal Code. However, since he had handed over his revolver to Beant Singh, offence under the Arms Act were made out. Accordingly, charge sheet was filed against the petitioner only under the Arms Act.

7. Trial Court, by order-on-charge dated 31.03.2016, has held that the pistol of the petitioner was used in the commission of offence by co-accused and the petitioner was in contact with the accused Beant Singh and Sandeep, prior to the commission of the offence, thus, there was *prima facie* evidence of the petitioner having conspired with the accused for committing the offence.

8. From the case of the prosecution, it is seen that the owner of the Company informed the complainant, on 05.09.2015, that he had to travel to Delhi with some valuables. As per the FIR, Beant Singh was sitting in the front of the car and the accused sitting at the back of the vehicle was carrying a pistol. There is no allegation that more than one weapon was flashed or used in the commission of the offence. As per the prosecution, from the possession of Beant Singh two weapons had been recovered, one revolver and the other a pistol. No doubt, there can be a confusion, in the version of a lay person, as to whether what he saw was a pistol or a revolver but from the material collected by the prosecution it is not clear as to whether the revolver of the petitioner was used in the commission of the offence. Furthermore,

charge sheet specifically states that the Call Detail Record (CDR) analysis had shown a call connection between the petitioner, Beant Singh and Sandeep on 03.09.2015 and 04.09.2015 and there were WhatsApp conversations also. Charge sheet does not disclose any conversation on the date of the incident or thereafter. Further, contents of the conversation or messages are not known. Charge sheet clearly shows that investigation has revealed the location of the petitioner to be in Jammu & Kashmir where he was posted. Further, as per the case of the prosecution, planning to commit an offence was done by Sunil Driver with the co-accused Shardha, who is alleged to have stated that he knew 3-4 boys, who could help in commission of the offence. None of the accused in their disclosure statements had named the petitioner as a co-conspirator. Even, as per the prosecution, no evidence of criminal conspiracy has been found against the petitioner.

9. Trial Court has held that the charge for the above said offences under IPC was made out on the ground that the offence that was committed is a very serious offence. Further, the Trial Court was of the view that as there was no evidence available that Beant Singh was posted with Petitioner Dharminder, the case of the petitioner that he had handed over the revolver to Beant Singh for the purpose of getting it serviced was not substantiated. Further, the Trial Court was of the view that the fact that Beant Singh was acquainted with Dharminder, supported the theory of criminal conspiracy.

10. Clearly the view of the Trial Court is flawed. Merely because an offence committed is a serious offence is no ground for framing a charge, when there is no evidence available against an individual. It is not the seriousness of an offence which is a ground for framing a charge but on existence of grave suspicion that the accused could be involved in the commission of the offence, that a charge is to be framed. Further, the fact that petitioner was acquainted with Beant Singh would not *ipso facto* support the theory of criminal conspiracy. For a criminal conspiracy there has to be meeting of minds for commission of offence. Merely because one is acquainted with an accused or has been in contact with the accused on or around the date of the offence, does not necessarily establish criminal conspiracy. The connection or conversation with an accused on or around the commission of the offence may raise a suspicion against the individual. But it is a settled proposition of law that charge is to be framed not merely on suspicion but on grave suspicion.

11. In the present case, the fact that the petitioner was known to the accused Beant Singh or that he had given his revolver to Beant Singh and even the allegation that the revolver of the petitioner is alleged to have been used in the commission of the offence, does not in any manner raise grave suspicion against the petitioner for having conspired to commit an offence under Sections 395, 365 read with Section 120B. Petitioner admittedly was posted at Jammu & Kashmir and on the date of the commission of the offence was in Jammu &

Kashmir.

12. In my view, the prosecution had rightly filed the charge sheet by stating that there was no evidence against the petitioner of criminal conspiracy. Clearly, the Trial Court has erred in holding that *prima facie* from the material placed before it, the petitioner was involved in criminal conspiracy for the commission of the offence of dacoity or that charge under Section 395 read with Section 120B and Section 365 read with Section 120B IPC is made out against the petitioner.

13. In view of the above, the impugned order dated 31.03.2016 is partly set aside. The petitioner is discharged of the offence under Section 120B IPC, Section 395 read with section 120B IPC, Section 365 read with Section 120B IPC. The petitioner shall continue to face trial for the offences under the Arms Act. The Trial Court shall accordingly modify the charge framed against the petitioner.

14. The petition is, accordingly, allowed in the above terms. There shall be no orders as to costs.

15. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

OCTOBER 30, 2018
st