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

+ **CRL.REV.P. 865/2019**

AMIR KHAN

..... Petitioner

Through

Mr. N. Hari Haran, Sr. Adv. with Mr. Arun Khatri, Mr. Amit Kumar, Mr. Sushant Chauhan, Mr. Nadeem, Mr. Vaibhav Sharma, Ms. Punya Rekha Angara and Mr. Sharang Dhulia, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through

Mr. Nikhil Goel, SPP, CBI with Mr. Naveen Goel, Mr. Dushyant Sarma and Ms. Piyo Harlod, Advs. Mr. Dharmendra Kumar Mishra, Contemnor in person with Mr. Mohit Sood, Mr. Kapil Chawla, Ms. Poonam Kaushik, Mr. S. Mehndiratta, Mr. Rajesh Hadda, Ms. Geeta Babbar, Mr. Keshav Kumar, Mr. Rishab, Mr. Amit Kumar, Ms. Sakshi Sharma, Mr. Vaibhav Tomar, Ms. Amrits Malik and Mr. Yashpal Singh, Advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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04.09.2019

Crl. M.A. 33933/2019 (Exemption)

Allowed, subject to all just exceptions.

This application is, accordingly, disposed of.

CRL.REV.P. 865/2019 & Crl. M.A.33932/2019

After hearing both the parties, the petition along with the pending application are dismissed.

Detailed order shall follow.

Vide order dated 02.09.2019, contempt notice was issued to the contemnor and was directed to file affidavit, explaining as to why contempt proceedings be not initiated against him. Since the main petition has been dismissed, Registry is directed to register a separate contempt case with title “Court on its Own Motion vs. Dharmendra Kumar Mishra.”

Pursuant to last order, the contemnor has not filed the affidavit and seeks further time to file the same.

Let needful be done within four weeks.

Since the trial is to be concluded by the trial court as per the directions of the Hon’ble Supreme Court within 45 days, let the contempt petition be listed before the Roster Bench on 02.12.2019, as requested by the contemnor he being counsel for the complainant.

SURESH KUMAR KAIT, J

SEPTEMBER 04, 2019

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

Date of decision: 04.09.2019

+ CRL.REV.P. 865/2019 with CRL.M.A. 33932/2019

AMIR KHAN

..... Petitioner

Through Mr. N. Hari Haran, Sr. Adv. with Mr. Arun Khatri, Mr. Amit Kumar, Mr. Sushant Chauhan, Mr. Nadeem, Mr. Vaibhav Sharma, Ms. Punya Rekha Angara and Mr. Sharang Dhulia, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

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Through Mr. Nikhil Goel, SPP, CBI with Mr. Naveen Goel, Mr. Dushyant Sarma and Ms. Piyo Harlod, Advs. Mr. Dharmendra Kumar Mishra, Contemnor in person with Mr. Mohit Sood, Mr. Kapil Chawla, Ms. Poonam Kaushik, Mr. S. Mehndiratta, Mr. Rajesh Hadda, Ms. Geeta Babbar, Mr. Keshav Kumar, Mr. Rishab, Mr. Amit Kumar, Ms. Sakshi Sharma, Mr. Vaibhav Tomar, Ms. Amrits Malik and Mr. Yashpal Singh, Advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present revision petition, the petitioner has challenged the order on charge dated 13.08.2019, charges dated 13.08.2019 and related

proceedings thereto passed by the Court of District and Sessions Judge (West), Tis Hazari, Delhi.

2. Brief facts of the case are that FIR No. 89/2018 dated 03.04.2018 was registered at PS – Makhi, District Unnao for the offences punishable under Sections 323/504/506 of Indian Penal Code, 1860 ('IPC') read with Sections 3/25 Arms Act against Surender Singh @ Pappu on the complaint of Tinku. Another FIR bearing No. 90/2018 dated 04.04.2018 was registered at aforementioned Police Station – Makhi for the offences punishable under Sections 147/323/504 IPC against Vineet Mishra @ Vinay Mishra, Birender Singh @ Bauwa Singh, Ram Sharam Singh @ Sonu Singh, Jaideep Singh @ Atul Singh Senger, Shashi Pratap Singh @ Suman Singh.

3. Later on, FIR No. 89/2018 was converted into RC-9S/2018 and FIR No. 90/2018 was converted in RC-10S/2018. Since Surender Singh @ Pappu expired in judicial custody on 09.04.2018, Section 302 IPC was added by CBI in RC-10S/2018. The petitioner herein arraigned as accused in RC-9S/2018.

4. Mr. Hari Haran, learned Senior Advocate appearing on behalf of the petitioner submits that as per the investigation of the CBI in RC-9S/2018, Surender Singh @ Pappu was implicated in a false case. It is an admitted

case of the petitioner, being a duty officer and also a wireless operator on 03.04.2018 at Police Station – Makhi that he never left the Police Station and has only prepared the seizure memo being part of his official duties. Petitioner was not in touch with other police officer who proceeded towards the spot, on the instructions of SP Unnao, through any mode of communication including mobile phone. Thus, petitioner has nothing to do with the beatings given to Surender Singh @ Pappu. This was the reason that the petitioner was not even arrested by CBI and without arrest, chargesheet was filed against him in RC-9S/2018, which relates to the falsification of records only.

5. It is submitted that on 13.04.2018, charges under Sections 147/148/149/323/504/506 and 302 IPC were framed in RC-10S/2018 against Vineet Mishra @ Vinay Mishra, Birendra Singh @ Bauwa Singh, Ram Sharan Singh @ Sonu Singh, Jai Deep Singh @ Atul Singh Sengar, Shashi Pratap Singh @ Suman Singh and Shailender Singh @ Shalu by the Court of Special Judge, CBI Lucknow. In other words, trial commenced in the RC-10S/2018. However, due to certain factors, both the above RCs alongwith other matters were transferred to Delhi in the Court of Sh. Dharmesh Sharma, District and Sessions Judge, Tis Hazari, Delhi. On 13.08.2019,

impugned orders were passed, whereby joint charges were framed in RC-9S/2018 and RC-10S/2018 by the aforementioned Court.

6. Learned Senior Advocate submits that the petitioner is aggrieved by the charges which were not even contemplated by the investigating agency i.e. CBI. The illegal nature of charges especially under Section 302 IPC is evident from the fact that petitioner was not part of RC-10S/2018 and still murder charges have been framed against him.

7. Mr. Hari Haran also submits that the contents of the charges framed against petitioner under Section 302 IPC read with Section 120 IPC shows that the petitioner alongwith other police officials sent Surender Singh @ Pappu to judicial custody fully knowing that injuries were dangerous. In other words, it has been alleged that petitioner failed in providing adequate medical treatment to Surender Singh @ Pappu. However, learned Trial Court has overlooked the relevant record that as per GD No. 52/19.05, Surender Singh @ Pappu had six injuries and was immediately sent to District Hospital by the petitioner under the care of constable Pankaj Kumar and SI Sushil Kumar.

8. It is argued that chargesheet in RC-10S/2018, categorically reveals that timely treatment was provided to Surender Singh @ Pappu. From

03.04.2018 till his death, Surender Singh @ Pappu was medically examined by Senior Doctors available at District Hospital, Unnao and Jail Hospital. The factum that Surender Singh @ Pappu died owing to the negligence of doctors is corroborated by the statement of Dr. Sushil Prakash Chaudhary who was examined as witness PW-41 by CBI. The abovenamed doctor was the head of the committee constituted by the then D.M. Unnao, namely, Sh. Ravi Kumar, who conducted inquiry in respect of the treatment administered to Surender Singh @ Pappu.

9. Learned senior counsel for petitioner further submits that the seizure memo alleged to be falsely prepared by the petitioner, is a wrong argument. The seizure memo is based on a pre-written document (*tehrir*) and no falsification can be attributed to petitioner. Further, being the duty officer, since an illegal weapon was seized, the petitioner was duty bound to prepare seizure memo in terms of Section 102 of Code of Criminal Procedure, 1973 ('Cr.P.C'). He further argued that even if for the sake of argument, it is admitted that there was a false implication, even then the petitioner came into picture only after the object of conspiracy for false implication of Surender Singh @ Pappu was achieved. Investigation of the CBI shows that *tehrir* was prepared at the house of SI Kanta Prasad which is situated outside

the Police Station and the alleged illegal weapon/ *katta* was already recovered and then only *tehrir* alongwith *katta* and Surender Singh @ Pappu was produced before the petitioner for further proceedings. Further, petitioner was not the part of the proceedings which were conducted thereafter i.e. taking Surender Singh @ Pappu to hospital or to produce him before the ACJM-III, Unnao. The framing of joint charges and arraigning of the petitioner in RC-10S/2018 caused irreparable loss and severe prejudice to the petitioner.

10. Mr. Hari Haran further submits that it is evident that petitioner was never interrogated by CBI on the point of charge under Section 302 IPC and also was not given opportunity to explain his stand on the said charge. Moreover, no opportunity was given to the petitioner to lead arguments on charge regarding the offence under Section 302 IPC read with Section 120B IPC.

11. Learned senior counsel also submitted that undisputedly the petitioner was not arrested by the CBI during investigation but due to framing of joint charges and arraigning of the petitioner in RC-10S/2018, he has been sent to judicial custody. Petitioner is being tried for serious offences like conspiracy and murder without an adequate opportunity of defending himself.

12. To strengthen his arguments, learned senior counsel has relied upon the case of *State of Andhra Pradesh vs. Cheemalapati Ganeswara Rao and Another, (1964) 3 SCR 297*, whereby full bench of Hon'ble Supreme Court held as under :

“25. According to Mr Chari Section 235(1) cannot be construed as having an overriding effect on Section 239 because whereas it contemplates acts so connected together as to form the same transaction resulting in more offences than one, Section 239(d) contemplates offences committed in the course of the same transaction and nothing more. The question is whether for purposes of Section 239(d) it is necessary to ascertain anything more than this that the different offences were committed in the course of the same transaction or whether it must further be ascertained whether the acts are intrinsically connected with one another. Under Section 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words “so connected together as to form the same transaction, but the words “so connected together as to form” are not repeated after the words “same transaction” in Section 239. What has to be ascertained then is whether these words are also to be read in all the clauses of Section 39 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between the acts and the transaction. According to this provision there must thus be a connection between a series of acts before they could be regarded as forming the same transaction. What is meant by “same transaction” is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would

necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a, strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words “so connected together as to form” in clauses (a), (c) and (d) of Section 239 would make little difference. Now a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression “same transaction” alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression “same transaction” occurring in clauses (a), (c) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to inquire further whether the provisions of Section 239 are subject to those of Section 236(1). The provisions of sub-sections (2) and (3) of Section 235 are enabling provisions and quite

plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several person permissible under Section 239.”

13. He further relied upon the case of ***Mohinder Singh vs. State of Punjab, (1998) 7 SCC 390***, whereby the Hon’ble Supreme Court observed as under:

“3. It was also submitted by the learned counsel that the offences punishable under Section 25 of the Arms Act and Section 5 of TADA Act could have been tried along with offences punishable under Section 399 and 402 IPC and Section 3 of the TADA Act. In support of his submission, he relied upon Section 220 of the Criminal Procedure Code. What is overlooked by the learned counsel is that it is an enabling provision which permits the court to try more than one offence in one trial. The court may or may not try all the offences together in one trial. It cannot be said that by trying separately, the Designated Court committed any illegality.”

14. He also relied upon the case of ***Balbir vs. State of Haryana and Anr., (2000) 1 SCC 285***, whereby the Hon’ble Supreme Court observed as under:

“11. According to Shri D.D. Thakur the case against the appellant and the case against Guria should have been consolidated together for a joint trial. He made an endeavour to show that two cases in respect of the murder of one person could be brought within the ambit of Section 223 of the Code (which corresponds to Section 239 of the old Code of 1898). As per that provision, all persons falling under any one of the seven categories enumerated therein can be charged and tried together. Out of those seven categories enumerated in the section

we need not even advert to those categories indicated with placitum (b), (C), (d), (e) and (f) of the section as they are not relevant in this context. We would, therefore, extract clauses (a) and (d) in Section 223 as under:

“223. The following persons may be charged and tried together, namely—

(a) Persons accused of the same offence committed in the course of the same transaction;

*(b)-(c)**

(d) persons accused of different offences committed in the course of the same transaction;

*In both the aforesaid clauses the primary condition is that persons should have been accused either of the same offence or of different offences “committed in the course of the same transaction”. The expression advisedly used is “in the course of the same transaction”. That expression is not akin to saying “in respect of the same subject-matter”. It is pertinent to point out that the same expression is employed in Section 220(1) of the Code also [corresponding to Section 235(1) of the old Code]. The meaning of the expression “in the course of the same transaction” used in Section 223 is not materially different from that expression used in Section 223(1) [sic 235(1)]. It is so understood by this Court in *State of A.P. v. Cheemalapati Ganeswara Rao*. The following observation in the said judgment is contextually quotable:*

“The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently. They would not form part of the same transaction but would constitute a different transactions. Therefore, even if the expression ‘same transaction’ alone had been used in Section 235(I) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression ‘same transaction’ occurring in clauses (a),

(c) AND (D) OF Section 239 as well as that occurring in Section 235(I) ought to be given the same meaning according to normal rules of construction of statutes.”

12. For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, than all those persons involved can be accused of the same or different offences “committed in the course of the same transaction”

13. But if in one case the accused is alleged to have killed a person without any junction with the accused in the other case, then it cannot be treated as the same offence or even different offences “committed in the course of the same transaction”. If such two diametrically opposite versions are put to joint trial the confusion which it can cause in the trial would be incalculable. It would then be a mess and then there would be no scope for a fair trial. Hence the attempt to bring the two cases under the umbrella of Section 233 of the Code has only to be foiled as untenable.”

15. While concluding his arguments, Mr. Hari Haran submits that the charges against the petitioner in RC-9S/2018 is to be tried by the Magistrate and in RC-10S/2018, wherein the petitioner is not an accused is to be tried by the Court of Sessions. Thus, ordering joint trial of both the aforementioned cases will cause prejudice to the defence of the petitioner, thus, he will lose his right to appeal, if convicted, by the Court of Sessions.

Moreover, since no beatings were given to Surender Singh @ Pappu in the Police Station, therefore, petitioner cannot be tried for conspiracy under Section 120B and for murder under Section 302 IPC. Thus, the present petition deserves to be allowed.

16. On the other hand, Mr. Nikhil Goel, Special Public Prosecutor appearing on behalf of CBI submits that on 03.04.2018 between 16.51 hours to 18.00 hours, Surender Singh @ Pappu alongwith Kishore were beaten by Atul Singh and his aides viz. Bauwa Singh, Vineet, Suman Singh and Sonu Singh, when Surender Singh @ Pappu was en-route to his home at his native village Makhi, Unnao. On 03.04.2018, between 17.17 hours to 21.43 hours, the accused MLA called the SP Unnao, through phone, through phone, to register a complaint against deceased for causing nuisance as a drunkard person. The SP passed this information to Ashok Bhaduria [accused 1 (A-1) in RC-9S/2018, who alongwith S.I. K.P. Singh reached at the spot of incident [SI K.P. Singh is accused (A-2) in RC-9S/2018]. The distance between the Police Station and place of incident is 800 meters, which is evident from document D-1 in RC-9S/2018. Despite the deceased being badly injured, he was brought to the Police Station and A-1 and A-2 were in direct mobile contact with the accused MLA till 21.43 hours. The statement

of PW-1 recorded under Section 164 Cr.P.C. on 03.04.2018 shows that the deceased was beaten and despite that, A-1 and A-2, (police officers) threw him in the car and brought to the Police Station. At the same time, A-6 (Bauwa in RC-10S/2018) was exhorting that the deceased should be further beaten up. PW-1 also states that her version of the case was not recorded by the police though she was at the Police Station at the same time when the deceased was being branded as accused. PW-9, Raja Pratap Singh in RC-9S/2018 stated in his statement dated 03.04.2018 that he wrote the FIR at the dictation of SI K.P. Singh (A-2) and another accused Tinku Singh. Statement dated 03.04.2018 of PW-10 establishes that after the registration of FIR by the petitioner, the accused had contacted him to inflict surgical injuries so as to justify the record in GD Entry No. 52. This shows that petitioner had concocted GD Entry on which heavy reliance is placed.

17. Learned counsel for the CBI further submits that other part of GD Entry, namely, recovery of Gun etc. from the deceased is also found to be false. On 03.04.2018, local police registered FIR against Surender Singh @ Pappu under Sections 323/504/506 IPC and Sections 3/25 Arms Act on the complaint of Tinku Singh showing that the deceased was actually produced by private persons (Tinku Singh, complainant, Bauwa Singh, Vineet, Suman

Singh and Sonu Singh) and handed over to police by aforementioned private persons alongwith Country Made Pistol with 4 Live Cartridges, allegedly belonging to the deceased. Accordingly, Surender Singh @ Pappu was sent for treatment to District Hospital, Unnao alongwith SI Sushil Kumar and Constable Pankaj Kumar. It is further argued that D-4 was the document created by accused – Amir Khan (petitioner in the present case) to show recovery of arms from the deceased. These arms were actually recovered from the house of A-2 i.e. SI K.P. Singh.

18. Learned counsel for CBI argued that Recovery Memo D-4 dated 03.04.2018 from the point of view of defence of the petitioner and testimony of PW-23 is not helpful because the arguments advanced by the learned counsel for petitioner is that Police Officer (PW-23) had also signed the recovery memo and was not made an accused. The argument of the learned counsel for petitioner is incorrect because document D-9 in RC-9S/2018 is the GD Entry recorded by the petitioner. The charge sheet has allegation of falsification of document. Even this document is falsified, as is clear from the evidence of PW-10 and Para viii of charge sheet mentioned above. Therefore, the fact that it was a part of conspiracy which involved death of the deceased, is something, which can only be tested during the trial.

19. Learned counsel further argued that medico-legal examination of Surender Singh @ Pappu was conducted on 03.04.2018 at 9.15 PM at District Hospital, Unnao by Dr. Prashant Upadhyay, EMO (PW-31 in RC-10S/2018). This was done three hours after the police saw the injuries on the deceased. 19 grave injuries were mentioned in the MLC. These were grave with regard to the size of the injuries and some of the injuries were sized at as deep as 15 cms to 31 cms. The MLC also recorded requirements of emergency stitches and immediate admission of the deceased in the hospital. On 03.04.2018 at 11.20 PM, Surender Singh @ Pappu was admitted in the District Hospital, Unnao.

20. Learned counsel for CBI further submits that on 04.04.2018 at 10.15 AM, Case Crime No. 90/2018 (cross case of the same version) was registered at Police Station – Makhi for the offences punishable under Sections 147/323/504 IPC against Bauwa Singh, Vineet Mishra, Shailu Singh, Sonu Singh and others on the complaint of Smt. Asha Singh. This case should have been registered by the petitioner since PW-1 says that she was present on the previous day at the Police Station and tried to give her version of the incident which was not recorded. On 04.04.2018, between 4 PM to 6.30 PM, Case Diary (Internal Page 5) made by accused - SI K.P.

Singh shows that SI Sushil Kumar brought injured Surender Singh @ Pappu before Ld. ACJM-IV, Unnao, as IO requested him to send Surender Singh to judicial custody for 14 days which was allowed. After production of Surender Singh @ Pappu before the aforesaid Court, he was again brought back to District Hospital, Unnao where he was formally discharged at 6.30 PM. On 05.04.2018 at 4 PM, District Jail, Unnao sent requisition to Chief Medical Superintendent of District Hospital, Unnao for sending physician and surgeon to District Jail, Unnao for providing treatment to Surender Singh @ Pappu. Accordingly, Dr. Alok Pandey, Physician and Dr. S.N. Gupta, Surgeon were sent for the aforesaid purpose. On 08.04.2018 at 9.05 PM, Surender Singh @ Pappu was sent to District Hospital from District Jail, where he was admitted and given treatment by Dr. Gaurav Agrawal, Emergency Medical Officer (PW-32 in RC-10S/2018). On 09.04.2018 at 3.40 AM, Surender Singh @ Pappu succumbed to injuries at District Hospital, Unnao. On 10.04.2018, post-mortem of Surender Singh @ Pappu was conducted by a panel of doctors.

21. Learned counsel for CBI submits that learned trial Court has rightly passed the impugned order based upon the material available on record and has taken the view that *“there is prima facie case that a conspiracy was*

hatched by the accused persons to silence the father of the prosecutrix and his family members by resorting to violence executed in a planned manner by forming an unlawful assembly, and then committing series of acts in a planned manner with continuity of action intricately connected by proximity to the place of occurrence, time and unity or community of purpose or design". Thus, there is no illegality and perversity in the impugned order and therefore, the present petition deserves to be dismissed.

22. I have heard the learned counsel for the parties in length and perused the material on record. Statement of PW-1, which is document 20 in RC-9S/2018 establishes that the deceased was badly beaten and despite that A-1 and A2, police officers threw him into the car and took to the Police Station. At the same time, A-6 in RC-10S/2018 was exhorting that deceased should be further beaten up. The said PW also states that her version of case was not recorded by the police though she was at the Police Station at the same time when the deceased was branded as accused. PW-9, Raja Pratap Singh states that he wrote the FIR at the dictation of SI K.P. Singh (A-2) and another accused Tinku Singh. Accordingly, the FIR was registered.

23. Statement of PW-10 shows that after registration of FIR by the petitioner, the accused had contacted him to inflict surgical injuries on the

person of Surender Singh @ Pappu (deceased) so as to justify what was recorded in GD Entry No. 52. This shows that petitioner knowingly concocted GD Entry No. 52. Consequently, the other part of GD Entry, namely, recovery of Gun etc. from the deceased is also found to be false.

24. It is pertinent to mention here that D-4 is the document created by the petitioner to show recovery of arms from the deceased, whereas, these arms were actually recovered from house of accused – SI K.P. Singh as is evident from Para viii of charge sheet in RC-9S/2018. It is pertinent to mention here that D-9 in RC-9S/2018 is the GD Entry 52 recorded by the petitioner. Even this document is falsified, as is clear from the evidence of PW-10 and Para viii of charge sheet. Thus, it creates doubt on the intention of the petitioner.

25. In my considered opinion, had petitioner given the correct picture in G.D. Entry 52 by mentioning that police officers including the S.H.O concerned brought Surender Singh, in police vehicle, in injured condition, said Surender would not have been booked in criminal case and his family members would be in position to get better treatment. In that situation, Surender Singh might survive and would not have died. Thus, the case of Surender Singh is height of planting the innocent person in a criminal case.

26. In addition to role of local police (U.P. Police), the Doctors of

concerned Hospital also played role of unbecoming of Doctors by treating him very casually and discharging him from the Hospital within no time and without giving proper treatment.

27. In view of the above discussion, whether it was a part of conspiracy which involved death of the deceased or not is something which can only be tested at trial. In addition to above, Case Crime No. 90/2018 under Sections 147/323/504 IPC was registered at PS – Makhi against Bauwa Singh, Vineet Mishra, Shailu Singh, Sonu Singh and others on the complaint of Smt. Asha Singh. Whereas, this case should have been registered by the petitioner since PW-1 – Asha Singh stated that she was present on the previous day at the Police Station at the time when Surender Singh @ Pappu (deceased) was branded as accused, and she tried to given her version of the incident which was not recorded by the petitioner who was the duty officer at that time.

28. On perusal of impugned order, the learned trial Court is of the view that *“there is prima facie case that a conspiracy was hatched by the accused persons to silence the father of the prosecutrix and his family members by resorting to violence executed in a planned manner by forming an unlawful assembly, and then committing series of acts in a planned manner with continuity of action intricately connected by proximity to the place of*

occurrence, time and unity or community of purpose or design”.

29. In Para 22 of the impugned order, the learned Special Judge observed that the *“the policemen A-1, A-2 & A-9 knowingly or deliberately became accessory to the crime thereby joining in the series of acts whereby they prepared and registered a false FIR and prepared other relevant documents in order to frame the father of the prosecutrix, in furtherance of achieving the common purpose of teaching the victim party a lesson for daring to rise up against the might of the accused Kuldeep Singh Sengar (A-3) and his family.”*

30. In Para 23, the learned Judge held that *“it was prima facie a case of turning a blind eye to whatever that was happening to the deceased and his family, and as per the prosecution of the policemen knowingly or deliberately delayed their intervention at the behest of the other accused person and failed to protect the victim party; and it was rightly canvassed by the CBI, that it was no part of their duties to entertain a false complaint and frame an innocent person. The plea that A-9 acted under the command of his superior can only be tested during the course of trial.”*

31. In case of ***State vs. Nalini, 1999 (5) SCC 253***, it was opined that applicability of Section 10 of the Evidence Act and its impact will be at the

stage of the trial and ought not to be considered at the stage of charge.

32. In ***CBI vs. Anup Srivastava, (2017) 15 SCC 560***, the Hon'ble Supreme Court held as under:

“26. Similarly, the law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. For a charge of conspiracy means knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or services in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.”

33. It cannot be disputed that purpose of the charge is to make an accused aware of the material against him so that he can answer the charge in his defence. However, the trial is ongoing expeditiously as per the orders of the Hon'ble Supreme Court and the petitioner, without suffering any protracted trial, has full opportunity to argue and for placing the defence evidence to show that he is not guilty of any of the charges framed against him. That apart, it is also a fact that no pleading of '*failure of justice*' exists in the

revision petition.

34. As argued by the learned counsel for petitioner that the charge sheet in RC-9S/2018 against the petitioner is to be tried by the Magistrate but by virtue of the impugned order, it shall be tried by the Court of Sessions, thus he loses one opportunity of appeal. However, I do not agree on the aforesaid submission for the reason that the petitioner, if convicted by the trial Court, still has opportunity to file appeal before this Court.

35. In view of above peculiar facts and circumstances of the case, I find no substance in the arguments advanced by learned senior counsel appearing on behalf of the petitioner and the judgments cited are of no help in this case.

36. Finding no merit in the present Revision Petition, the same is accordingly dismissed. Pending application also stands disposed of.

37. I hereby make it clear that the Ld. Trial Judge shall not get influenced by the observations made by this Court in the present petition.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 04, 2019

PB