

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

CRL.REV.P. 583/2016

Reserved on : 20.11.2019

Date of Decision : 25.11.2019

IN THE MATTER OF:

CRL.REV.P. 583-2016

THE STATE (NCT OF DELHI)

..... Petitioner

Through: Ms. Radhika Kolluru, APP for
State with SI Amit Kumar, ASI
Suresh Kumar, P.S. New Usman
Pur.

Versus

AMIT GOSWAMI

..... Respondent

Through: Mr. Rabindra Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present revision petition has been filed assailing the impugned order of discharge dated 29.01.16 passed by learned Addl. Sessions Judge in FIR No. 142/2010 under Sections 326/34 IPC P.S. New Usmanpur. Initially, vide order dated 05.06.13, the respondent was charged under Sections 326/34 IPC along with another co-accused Jitender Giri.

2. The prosecution case, as noted in the impugned order, is reproduced hereinunder :-

“On 01.05.2010, on the statement of the injured Ramesh Jain FIR bearing No.142/2010 was registered PS New

Usmanpur. It was alleged by the injured/complainant that on that day while he was going to his in-laws house at Brahampuri and when he reached at Moni Baba Mandir, three persons on a motorcycle overtook and stopped him. He identified two of them, namely, Jitender and Amit. One of them, namely, Amit exhorted to him to teach him a lesson. Thereafter, Jitender who was holding a revolver in his hand fired upon him which hit his right leg and they all three fled away on the motorcycle. The injured was taken to the hospital by the PCR. On completion of investigation, chargesheet was filed against accused Jitender Giri while Amit was kept in column No.11 since it was revealed during investigation that at the time of the alleged incident Amit was at Hyderabad in connection with some work of his company where he was employed.”

3. Learned APP for the State has contended that the complainant has suffered gunshot injury which is supported by his MLC records. She further submitted that the complainant has specifically named the present respondent and has also escribed his role in his statement given to the police. It was stated by the complainant that on 01.05.10 the complainant was going on his motorcycle and when he reached Moni Baba Mandir then three persons on motorcycle asked him to stop. He already knew two of them whose names were Jitender and Amit. On exhortation given by Amit, Jitender fired the shot which hit his right leg, thereafter, the accused persons fled on the motorcycle.

4. Learned counsel for the respondent, on the other hand, has pointed out that during the course of investigation itself the fact, that respondent was at Hyderabad in connection with the work of his company, has been verified. It was also submitted that the respondent has been falsely implicated on account of previous enmity as the complainant was facing a trial for gangrape with a lady who happened to be sister of Amit and

wife of the other co-accused. It is submitted that the respondent along with co-accused were the witnesses in the said case in the court pending in Ghaziabad, UP.

5. The trial court vide order dated 12.04.13 has noted that during the investigation only one of the accused namely Jitender was arrested whereas the present respondent was summoned by the court. Further, no investigation was carried against third accused. On 09.05.13, the trial court directed the DCP to conduct an inquiry. A report was filed by the concerned Addl. DCP. As per the report, the presence of the respondent at Hyderabad at the time of the incident, was verified to be correct. It was also noted in the impugned order that the investigating agency neither established the identity of the third accused nor seized the weapon of offence or the motorcycle used in the incident.

6. The presence of the respondent at the spot on the day of the incident was not established during the investigation for which reason his name was kept in column 11 without arrest. He was summoned by the trial court. Considering the material available on record and the positive verification by the investigating agency to the effect that the present respondent was away to Hyderabad, the respondent was discharged.

7. While framing charge against an accused, although the probability value of the record cannot be gone into but the court before framing charge must apply its judicial mind on the material placed on record and come to a satisfaction about the possibility of the commission of the offence by the accused. An order on discharge must show an application of mind by the concerned court. It must contain reasons which show the

application of mind after considering the material on record placed by the prosecution.

8. In R.S. Mishra vs. State of Orrisa & Ors. reported as (2011) 2 SCC 689, the Supreme Court held as follows :-

“18. As seen from Section 227 above, while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "If after such consideration". Thus, these words in Section 228 refer to the 'consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed 'after such consideration' and therefore, that consideration must be reflected in the order.”

9. In Dilawar Balu Kurane vs. State of Maharashtra reported as (2002) 2 SCC 135, while reiterating the principles laid down in Union of India vs. Prafulla Kumar Samal reported as 1979 3 SCC 74, Supreme Court has held as follows :-

“Now the next question is whether a prima facie case has been made out against the appellant. In exercising

powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (See Union of India versus Prafulla Kumar Samal)."

10. In view of the above enunciation of law and the fact that the presence of the respondent at the spot on the date and time of the incident has been found to be unbelievable in view of the verification done by the investigating agency to the effect the respondent was in Hyderabad, I find no infirmity or illegality in the impugned order of discharge passed by the Additional Sessions Judge. Accordingly, revision petition is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 25, 2019

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