

\$~16

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

%

Judgment delivered on: 21.02.2019

+

CRL.REV.P. 588/2016 & CrI.M.A. 13717/2016

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

versus

NITIN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Hirein Sharma, APP for the State with SI Sushil Sharma, PS Rajinder Nagar.

For the Respondent: Mr. Neeraj Anand, Advocate with respondent in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns discharge order dated 31.03.2016 whereby the respondent, Nitin has been discharged of all the offences i.e. Sections 304/323 Indian Penal Code, 1860.

2. Subject FIR was registered on the complaint of one Naresh Kumar alleging that there was a dispute between his family and the family of other accused, consequent to an altercation which took place and thereafter his father was assaulted. It is alleged that his father was suffering from a heart ailment and had undergone angioplasty and accused knew about his heart condition and knowing the same assaulted his father which led to his death.

3. The complainant as well as other family members, immediately after the incident gave vivid description of the incident and also named all the persons who were alleged to be involved in the alleged offence and their names are mentioned in the FIR.

4. The name of the respondent is not mentioned in the FIR. The Trial Court has noticed in the impugned order that the name of the respondent was mentioned in a supplementary statement given by complainant – Naresh Kumar under Section 161 Cr.P.C after a gap of 5 months.

5. On perusal of the record, the Trial Court was of the view that there was substantial improvement in the case of the complainant and apart from mentioning of the name after a gap of 5 months there was no other material against Nitin to raise grave suspicion of his involvement in the subject offence.

6. Perusal of the record shows that an altercation had taken place between the two families on 11.05.2013 on which a DD entry was made on the complaint of one of the accused. Thereafter another altercation took place a day later i.e. on 12.05.2013 between the family of present complainant – Naresh Kumar as well as the other accused, consequent to which subject FIR was registered.

7. Apart from the statement of Naresh Kumar, the statements of his wife and four other family members, who were alleged to be present at the time when the altercation took place, were recorded by the IO. The six eye witnesses (including the complainant) in their statements, recorded immediately after the incident, do not name Nitin as one of the persons who

were involved. The name of respondent – Nitin surfaces only in the supplementary statement recorded after a gap of five months.

8. A statement which is recorded immediately after the incident has to be given greater credence as compared to a statement which is recorded after five months. The Trial Court has rightly observed in the impugned order that the addition of the name of the respondent appears to be an afterthought.

9. It is not in dispute that between the date of the incident and the supplementary statement (i.e. a gap of five months), investigation did not reveal any evidence or incriminating material to show that respondent was present or involved in the subject offence.

10. Keeping in view the totality of facts and circumstances and also the fact that no involvement of the respondent has not been substantiated by any material, collected through investigation, I am of the view that there is no infirmity in the order of the Trial Court in discharging the respondent of the said offences.

11. In view of the above, I find no merit in the petition. The petition is accordingly dismissed.

12. Order *Dasti* under signatures of Court Master.

FEBRUARY 21, 2019
rk

SANJEEV SACHDEVA, J