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

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Judgment delivered on: 14.02.2019

+ CRL.REV.P. 635/2014

JAI BHAGWAN

..... Petitioner

versus

THE STATE (NCT OF DELHI)

..... Respondent

+ CRL.REV.P. 40/2015

STATE

..... Petitioner

versus

VINAY KUMAR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. R.N. Sharma with Mr. Deepak Kumar, Advocate for the petitioner in Crl.Rev.Pet.635/2014
Mr. Hiren Sharma, APP for the State in Crl.Rev.P.40/2015
ASI Prem Ram Arya, PS Hari Nagar.

For the Respondent: Mr. Hiren Sharma, APP for the State in Crl.Rev.P. 635/2014
Mr. Prem Chhetri, Advocate for respondent in Crl.Rev.P.40/2015
ASI Prem Ram Arya, PS Hari Nagar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

Crl.M.A.860/2015 (for condonation of delay) in Crl.Rev. P.40/2015

For the reasons stated in the application, application is allowed.
The delay in filing the petition is condoned.

CRL.REV.P. 635/2014 & CRL.REV.P. 40/2015

1. Both these petitions impugn common order-on-charge dated 28.07.2014.
2. Petitioner in Crl.Rev.P.635/2014 i.e. Jai Bhagwan impugns order-on-charge insofar as the Court holds that *prima facie* material is available against him for framing of charge under Sections 120B/147/148/149/307/365/380 IPC.
3. Crl.Rev.P. 40/2015 has been filed by the State impugning order dated 28.07.2014, whereby Sub Inspector Vinay Kumar has been discharged of all offences.
4. Subject FIR No.672/2005, Police Station Hari Nagar, registered under Sections 147/148/149/307/365/380/120B IPC was registered on the complaint of one Mr. Bhimsen Ahuja alleging that he was the owner and in possession of a property in which certain people barged in with sticks and rods and attempted to evict him from the said property. It was alleged that those persons physically assaulted him and his wife and daughter. It was alleged that they even kidnapped his son for the purposes of evicting them from the said property.
5. It was alleged that the household goods of the property were

loaded in two tempo trucks and when the said persons were in the process of removing the goods and fleeing, public intervened and Police came and two of the accused were apprehended from the spot.

6. It is the contention on behalf of Sub-Inspector Vinay Kumar that he was also part of the police party which had apprehended the two accused.

7. As per the complainant, the attempt to evict the complainant and take forcible possession was at the behest of some property dealer with whom he had a dispute.

8. The case of the prosecution is that the two accused, who were apprehended from the spot, in their disclosure statements stated that they had been approached by the property dealer for evicting the complainant and they approached Sub Inspector Vinay Kumar, who assured them that on payment of money he would not intervene in the eviction process and rather would assist them in evicting the complainant. They in their disclosure statement further stated that they had taken the help of 4-5 people including Jai Bhagwan for the purposes of eviction.

9. Trial Court in the impugned order on charge, *inter alia*, held as under:-

“If contents of charge-sheet, statements of witnesses and documents attached with the charge sheet are perused. It

is clear that basic ingredients of offences U/S 120-B/147/148/149/307/365 IPC are made out prima-facie against accused Jai Bhagwan as charges already framed qua other five accused persons. The complainant and other witnesses have described the incident in detail. The issues raised by Ld. Counsel accused Jai Bhagwan are subject matter of trial and no clean chit can be given to the accused Jai Bhagwan at this stage for any of the offences without entering into the trial.

So far as case against accused Vinay Kumar is concerned, he is not a party to the actual dispute and allegations against him are that he helped one of the party i.e. the accused persons in commission of the alleged offence by misusing his authority as a police officer. It is alleged that he obtained Rs. 50,000/- in cash from the accused persons and helped them in vacating the premises. After carefully perusal of record, material contradictions and discrepancies are noticed in the case of prosecution qua accused Vinay Kumar. It is case of the prosecution that a sum of Rs. 50,000/- was recovered from accused Vinay Kumar on 22-11-2005 being the amount obtained by him from the accused persons and that the same was deposited in the Malkhana. Statement of ASI Krishan Chander and Inspector Omvati Malik recorded U/S 161 Cr.P.C. on 23-11-2005 talks about such facts. The date of arrest of accused Vinay Kumar is also 22-11-2005. But on the contrary, the Malkhana record of the concerned P.S. tells that the sum of Rs. 50,000/- had already been deposited on 21-11-2005. On previous date, the concerned MHC(M) HC Harjiwan Singh Dhillon was summoned with register No. 19 and was examined as CW-1 on 7-7-2014. He placed on record the relevant entries Ex.CW-I/A. As per entry No. 2640 dt. 21-11-2005, the sum of Rs. 50,000/- pertaining to present case allegedly recovered from accused Vinay

Kumar was deposited on 21-11-2005. Not only this, the next entry No. 2641, pertaining to some other case, is also of the date 21-11-2005. Moreover, there is no entry pertaining to 2201102995 in the said register and the entry No.2642 pertaining to some other case is dated 23-11-2005.

In such circumstances, it can be said that the case of the prosecution qua accused Vinay Kumar is beyond explanation and such material discrepancies cannot be over looked even at the stage of framing of charge. In my considered opinion, there are no sufficient grounds to proceed against the accused Vinay Kumar by framing charge for any of the offences alleged. Hence, with these observations, accused Vinay Kumar is discharged.

Now to come up for framing of charge qua accused Jai Bhagwan on 16-8-2014.”

10. Insofar as Jai Bhagwan is concerned, The Trial Court in the impugned order noted that the contents of chargesheet, statement of witnesses and documents attached with the chargesheet had been perused and on perusal of the same, the Court was of the view that the ingredients of the subject offence were *prima facie* made out against Jai Bhagwan and, as such, charges were liable to be framed.

11. It is an admitted case of the prosecution that apart from the disclosure statement of the two accused, who were apprehended from the spot, there is no material or evidence on record showing involvement of Jai Bhagwan in the subject offence.

12. The order of the Trial Court though states that the contents of the chargesheet, statement of witnesses and documents attached with the chargesheet have been perused and the same *prima facie* show sufficient material, however, does not record as to what is the material which the Trial Court found was sufficient to raise grave suspicion against Jai Bhagwan.

13. Admittedly, there is no test identification parade or identification of Jai Bhagwan by the complainant. The name of Jai Bhagwan has surfaced only because of the disclosure statement of the two accused. There is no corroborating evidence or recovery consequent to the alleged disclosure statement or evidence on record to connect Jai Bhagwan with the subject offence.

14. In that view of the matter, clearly, the Trial Court fell in error in holding that *prima facie* material existed against Jai Bhagwan for framing of charges under sections 120B/147/148/149/307/365/380 IPC.

15. Charge can be framed not on mere suspicion but on grave suspicion of involvement of the accused in the commission of the offence. It is also settled position that mere disclosure statement of co-accused without any other corroborating incriminating material is insufficient for the purposes of framing of charge. In that view of the matter, the impugned order insofar as it directs framing of charge

against Jai Bhagwan is concerned, cannot be sustained.

16. Coming to the role ascribed to Sub Inspector Vinay Kumar by the prosecution, once again it is noticed that apart from the disclosure statement of the other co-accused to connect Sub Inspector Vinay Kumar with the subject offence, there is no other corroborating incriminating material against him.

17. The contention of Sub Inspector Vinay Kumar is that he was part of the Police team which had reached the spot and assisted in apprehending the two accused. The allegation of the two accused, who were apprehended from the spot, is that they had paid a sum of Rs.50,000/- to Sub Inspector Vinay Kumar for his help. Rs.50,000/- was alleged to have been recovered from the possession of Sub Inspector Vinay Kumar. Though the Trial Court has noticed that the amount is alleged to have been recovered on 22.11.2005 whereas the Malkhana entry of deposit of the said cash of Rs.50,000/- was dated 21.11.2005 prior to the alleged recovery from Sub Inspector Vinay Kumar. On that ground, the Trial Court found that since there were several discrepancies, no charge could be framed against Sub Inspector Vinay Kumar.

18. In addition to the reason given by the Trial Court, It is noticed that there is no material available on record on which grave suspicion can arise against Sub Inspector Vinay Kumar for a charge to be

framed against him. Mere recovery of Rs. 50,000/- from Sub Inspector Vinay Kumar, is not sufficient to connect said amount with the subject offence. It is not the case of the prosecution that the amount of Rs.50,000/-, which was alleged to have been paid to Sub Inspector Vinay Kumar, was in currency which was either numbered or marked. Since the currency, which is alleged to have been recovered from Sub Inspector Vinay Kumar, was not identifiable or connectable to the amount of Rs.50,000/- allegedly paid by the two accused. Mere recovery of un-identifiable sum would not be sufficient to raise grave suspicion against Sub Inspector Vinay Kumar for the purposes of framing of charge against him.

19. I find no infirmity in the impugned order dated 28.07.2014 insofar as it discharges Sub Inspector Vinay Kumar of the subject offence.

20. In view of the above, Crl.Rev.P.635/2014 filed by Jai Bhagwan is allowed and the impugned order dated 28.07.2014 qua Jai Bhagwan is set aside and Crl.Rev.P.40/2015 filed by the State is dismissed.

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

FEBRUARY 14, 2019
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SANJEEV SACHDEVA, J