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

% Judgment delivered on: 23.01.2019

+ CRL.REV.P. 1052/2018

YASHVIR SINGH TYAGI Petitioner

versus

STATE Respondent

+ CRL.REV.P. 1068/2018

RAJEEV CHOUDHARY @ REJEEV KUMAR..... Petitioner

versus

STATE Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. R.N. Mittal, Sr. Advocate with Mr. K.K. Tyagi, Mr. Iftekhar Ahmed and Mr. Vimal Rathi, Advocates for the petitioner in CRL.REV.P. 1052/2018

Mr. R.M. Tufail with Ms. Astha, Mr. Farooq Chaudhary and Mr. Naahid Naasir, Advocates for the petitioner in Crl.Rev.P.1068/2018

For the Respondent : Mr. Hirein Sharma, APP for the State.
SI Mukesh Yada, PS Jagatpuri.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV.P. 1052/2018 & Crl.M.A.48381/2018 (stay) &

CRL.REV.P. 1068/2018

1. Petitioner in Crl.Rev.Pet.1052/2018, i.e., Inspector Yashvir Singh Tyagi impugns order dated 26.10.2018 to the extent that the said order records that *prima facie* it appears that the petitioner Inspector Yashvir Singh Tyagi has committed an offence under Section 201/192/120B Indian Penal Code (I.P.C. for short) and thereafter summons him as an accused under Section 319 Criminal Procedure Code (Cr.P.C. for short) for the offence punishable under Sections 201/192/120B I.P.C. and further lists the case for framing additional charge against the accused under Section 201/120B I.P.C..

2. Petitioner in Crl.Rev.P.1068/2018, i.e., Rajeev Chaudhary @ Rajeev Kumar, who is the accused in FIR No.194/2014 under Section 302 I.P.C., Police Station Jagat Puri also impugns the said order *insofar* as it seeks to list the matter for framing additional charge against him under Sections 201/120B I.P.C..

3. Inspector Yashvir Singh Tyagi was the first Investigating Officer of the case and was entrusted with the investigation of the case at the time of registration of the FIR on 31.03.2014 till 04.04.2014, when the case was transferred to District Investigation Unit.

4. Subject FIR was registered on the complaint of one constable Sanjeev, who had given his statement that he was on duty on the police picket in the intervening night of 30 – 31 March, 2014 and at

about 1 AM he saw two persons, whom he knew from before, get out of a Scorpio Car on the main road where they were talking. He subsequently saw that the talking had escalated into an aggravated discussion, where after, he stated that he saw the accused Rajeev Chaudhary take out a revolver from his pocket and with that he shot the deceased on his right temple at point blank range, because of which the victim died. Subsequently, it is alleged that the accused drove away from the spot in his Scorpio Car.

5. FIR was registered on the DD Entry given on the statement of Constable Sanjeev. Thereafter, investigation was marked to Inspector Yashvir Singh Tyagi.

6. Perusal of the record shows that the Inspector Yashvir Singh Tyagi thereafter issued "*Request For Post Mortem*" to Guru Teg Bahadur Hospital requesting for preservation of certain items.

7. FIR was registered on 31.03.2014, final report was filed on 28.06.2014 reporting that it was not a case of murder but of suicide. The Court of Metropolitan Magistrate was not satisfied with the report and, accordingly, on 30.06.2014, directed further investigation. Thereafter, on 30.08.2014, another final report was filed, wherein, the Police reported that they were not certain as to whether it was a case of murder or suicide. On perusal of the evidence and after hearing the counsel for the accused and also the Public Prosecutor, charge under

Section 302 I.P.C. was framed against the accused Rajeev Chaudhary, (petitioner in Crl.Rev.Pet.1068/2018).

8. During trial when the statement of the doctor, who had appeared from Guru Teg Bahadur Hospital as PW – 3, to prove the “*Request For Post Mortem*”, was being recorded, it transpired that the “*Request For Post Mortem*”, a copy of which was produced by the hospital, showed that only three items were requested to be preserved, i.e., viscera, clothes and blood.

9. When Inspector Yashvir Singh Tyagi appeared as a prosecution witness, as. PW – 11, he also sought to prove the original “*Request For Post Mortem*”. The Trial Court observed that in the original “*Request For Post Mortem*”, produced by Inspector Yashvir Singh Tyagi, apart from the three items sought to be preserved (as indicated by PW – 3), there were two additional items which were mentioned in the original “*Request For Post Mortem*”, i.e., (d) handwash of the deceased and (e) scalp hair.

10. The Trial Court observed that at the time of the recording of the statement of PW – 3, a specific question had been put by learned counsel appearing for the accused as to why he had preserved the scalp hair when there was no request made in the “*Request For Post Mortem*”. The doctor had stated that he had preserved the scalp hair on his own. He categorically denied that there was any request made

for preserving the handwash of the deceased.

11. The Trial Court, in the impugned order, has noticed that during investigation the case was diverted towards suicidal theory and even charge sheet was filed indicating that during investigation, evidence of Section 302 I.P.C. was not found and, accordingly, the Trial Court was of the view that preservation of handwash of the deceased and accused, to rule out the possibility of using revolver by showing the presence of gunpowder/lead particles on the handwash of either of deceased or accused, was an important piece of evidence.

12. The Trial Court thereafter *inter alia* held as under:-

“As during investigation this case was diverted towards suicidal theory and even the police filed the charge sheet that during investigation, evidence of section 302 I.P.C. was not found, thus, preservation of handwash of deceased and accused to rule out the possibility of using revolver by showing the presence of gunpowder/led particles on the handwash of either of deceased or accused, was an important piece of evidence.

It is pertinent to note here that doctor, who conducted post-mortem on the body of deceased was examined as PW3 and during his examination, PW3 Dr. Vishwajeet Singh specifically deposed that IO only requested three items to be preserved i.e. viscera, clothes and blood vide Ex.PW3/C i.e. photocopy/carbon copy of request for post-mortem and he further explained that at his own he preserved the scalp hair from around the firearm entry wound site for range estimation and further specifically deposed that before starting the postmortem the

investigating officer was asked, if preservation of swab/handwash of deceased is required, on which he said that it is not required and he recorded this fact in post-mortem report Ex.PW3/B.

Thus, there are two documents on record i.e. Ex.PW3/C and Ex.PW11/E and exhibit PW3/C is the photocopy of the request for the post-mortem made by IO/Inspector Yashvir Tyagi i.e. Ex.PW11/E wherein on one document i.e. request for post-mortem, which was given to doctor, who conducted the post-mortem it was not mentioned to preserve the handwash of deceased while in other document i.e. request for post-mortem Ex.PW11/E which was filed along with charge sheet, it is mentioned to preserve the handwash. These facts show that an attempt was made to show the court that although IO requested the concerned doctor, who conducted the post-mortem vide request Ex.PW11/E to preserve the handwash of deceased to rule out the possibility of suicide but the concerned doctor had not taken the handwash while in fact the IO refused the doctor to take the handwash and in carbon/Photostat copy of the request for post-mortem, which he had given to doctor at the time of post-mortem, he had not mentioned for taking the handwash of the deceased.

Not only this, in report Ex.PW8/A, Dr. N. B. Bardhan observed a strong presence of "Nitrite" in the handwash sample of the accused and further observed that such a strong presence of "Nitrite" is generally not observed in a handwash sample.

After perusing the material on record and evidence of PW3 Dr. Vishwajeet Singh as well as of PW11 Inspector Yashvir Tyagi, it appears to me that Inspector Yashvir Tyagi knowingly for causing disappearance of the

evidence, fabricated the false evidence by mentioning that he requested for taking handwash of the deceased vide Ex.PW11/E and in fact he did not do so and asked the doctor not to preserve the handwash of the deceased as appearing in post-mortem report Ex.PW3/B in conspiracy with the accused to help him. Section 319 Cr.P.C empowers the Court that if during trial it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. After considering the evidence of PW3 Dr. Vishwajeet Singh and PW11 Inspector Yashvir Tyagi, as well as documents Ex.PW3/B, Ex.PW3/C and Ex.PW11/E, prima facie, it appears that Inspector Yashvir Tyagi has committed an offence punishable u/s. 201/192/120B I.P.C.. Therefore, Inspector Yashvir Tyagi is summoned as an accused u/s. 319 Cr. P.C for offence punishable u/s. 201/192/120B I.P.C.. He be summoned accordingly.

Put up for appearance of Inspector Yashvir Tyagi as an accused for offence punishable u/s. 201/192/120B I.P.C. and for framing additional charge against accused u/s. 201/120B I.P.C., on 10.12.2018.”

13. By the impugned order, the Trial Court on perusal of the material and evidence of PW – 3 and PW – 11 has returned a *prima facie* finding that it appeared that the Inspector Yashvir Singh Tyagi, knowingly for causing disappearance of the evidence, fabricated the false evidence by mentioning that he had requested for taking handwash of the deceased when in fact he had not done so.

14. The Trial Court, while exercising powers under Section 319 Cr.P.C., *prima facie* held that Inspector Yashvir Singh Tyagi had committed an offence punishable under Section 201/192/120B I.P.C. and, accordingly, summoned him to face trial along with the accused.

15. Learned senior counsel appearing for Inspector Yashvir Singh Tyagi submits that no offence either under Section 201 I.P.C. or under Section 192 I.P.C. is made out. He submits that the basic ingredients of Section 201 I.P.C. are lacking in the present case and the circumstances do not warrant proceedings against the petitioner Inspector Yashvir Singh Tyagi for the offence under Section 192 I.P.C..

16. Learned senior counsel further contends that in terms of Section 195 Cr.P.C., no Court can take cognizance of an offence under Section 192 I.P.C. except on a complaint by a concerned Court. Learned senior counsel further submits that a complaint under Section 195 Cr.P.C. has to be before the concerned Magistrate and the Sessions Court, more so, the Court that is seized of the subject FIR, cannot try the same. He further submits that the procedure under Section 340 Cr.P.C. has to be followed.

17. Learned counsel appearing for the accused Rajeev Chaudhary also submits that the facts do not show that ingredients of Section 201 I.P.C. or Section 192 I.P.C. are made out. He further submits that

there is no question of the accused being in criminal conspiracy with Inspector Yashvir Singh Tyagi and, as such, he cannot be made to face additional charge under Sections 201/120B I.P.C..

18. Learned counsel for the accused Rajeev Chaudhary also contends that the FIR, which has been registered on a DD Entry, is not registered on the first information as the first information was a telephonic call by Constable Sanjeev that an accident had taken place.

19. Learned APP for the State submits that *ex facie* it is apparent that the Inspector Yashvir Singh Tyagi has fabricated evidence as the “*Request For Post Mortem*” produced by the hospital and the “*Request For Post Mortem*” produced by Inspector Yashvir Singh Tyagi in evidence do not tally. He further submits that the ingredients of Section 201 I.P.C. are clearly made out.

20. Since only a photocopy of “*Request For Post Mortem*” had been produced and tendered in evidence by Guru Teg Bahadur Hospital, directions were issued to Superintendent, Guru Teg Bahadur Hospital to produce their record. On 09.01.2019. Mr. Sharad Verma, Mortuary In charge, GTB Hospital had produced the carbon copy of the “*Request For Post Mortem*”. Perusal of the carbon copy showed that same was identical to the one which was produced by the Doctor from Guru Teg Bahadur Hospital – PW-3 before the Trial Court and exhibited as Ex.PW3/C.

21. In the instant case, Inspector Yashvir Singh Tyagi has been summoned to face trial under Section 201/192/120B I.P.C..

22. For section 201 I.P.C. to be attracted, the ingredients of said section have to be fulfilled.

23. Section 201 I.P.C. reads as under:-

“201. Causing disappearance of evidence of offence, or giving false information to screen offender.—

“Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years’ imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished

with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.”

24. Section 201 I.P.C. makes a person punishable for the said offence if (i) a person knowing or having reason to believe that an offence has been committed, (ii) causes any evidence of the commission of that offence to disappear, (iii) with the intention of screening the offender from legal punishment, or (iv) with that intention gives any evidence respecting the offence, which he knows or believes to be false.

25. In the present case, the allegations against the Inspector Yashvir Singh Tyagi is that in the original “*Request For Post Mortem*”, that he has produced in evidence, he had mentioned two additional items to be preserved i.e. (i) handwash of the deceased and (ii) scalp hair of the deceased.

26. He has not been summoned to face charge under section 201 I.P.C. for the reason that he had omitted to mention these two items, when he had issued the “*Request For Post Mortem*” to the hospital, but because he has added these two items in the original “*Request For*

Post Mortem” later.

27. For Section 201 I.P.C. to be attracted there has to be an action of a person causing disappearance of any evidence of offence and that disappearance has to be with the intention of screening the offender.

28. Subject FIR has been registered on a statement given by an eye witness – Constable Sanjeev, that he had observed the accused fire at the deceased. The eye witness version given to the police was that he had seen the incident and he had seen the accused shoot the deceased at point blank range. The eye witness account is not that the deceased had fired the weapon.

29. The two items which are missing from the “*Request For Post Mortem*” are not pieces of evidence which were available and Inspector Yashvir Singh Tyagi has caused their disappearance. It is the case of the prosecution that the handwash of the accused was taken when the accused was apprehended.

30. It is not the case that the request for post mortem, as it originally stood, attracts Section 201 I.P.C.. Section 201 I.P.C. is sought to be attracted solely because of alleged subsequent addition of two items in the “*Request For Post Mortem*” by Inspector Yashvir Singh Tyagi. Even if it is assumed that the two items have been added later by Inspector Yashvir Singh Tyagi, the Impugned order

does not take into account that this action has not caused disappearance of any evidence. Impugned order does not state as to what evidence has disappeared.

31. Further, section 201 is attracted, if the disappearance of evidence is with the intention of screening the offender. Trial court order is also silent as to how the subsequent addition of two items in the “*Request For Post Mortem*” screens the accused.

32. One of the items, i.e., the scalp hair, has been preserved by the doctor and the other item, i.e., the handwash of the deceased would not, in any manner, aid or screen the offender, i.e. the accused Rajeev Chaudhary.

33. The Trial Court has passed the impugned order on the ground that originally charge sheet has been filed, diverting the case towards suicide theory. What the Trial Court failed to notice is that Inspector Yashvir Singh Tyagi was the Investigating Officer only for four days and during the period that he was the Investigating Officer, the FIR was registered and investigated for the offence under Section 302 I.P.C..

34. It is an admitted position that there is no circular or office order stipulating that in all cases involving gunshot injury, hand wash of the deceased has to be taken and preserved. In the facts of a particular

case, the Investigating officer may or may not request for taking and preserving the hand wash of the deceased.

35. In this case, there was an oral statement of an eyewitness who had categorically stated that he had viewed the incident. The statement of the eyewitness to the Investigating Officer did not indicate that the weapon had ever travelled into the hands of the deceased. As per the eyewitness statement, which was then available before the then Investigating Officer, i.e., Inspector Yashvir Singh Tyagi, taking and preserving the hand wash of the deceased was inconsequential.

36. In these circumstances, no fault can be found with the Inspector Yashvir Singh Tyagi for not having requested for taking and preserving the hand wash of the deceased.

37. The Trial Court relied on a final report, which was filed on 28.06.2014 through some other Investigating Officer because Inspector Yashvir Singh Tyagi had ceased to be the investigation officer after four days on 04.04.2014.

38. Clearly, the action of the petitioner Inspector Yashvir Singh Tyagi does not cause any evidence of commission of offence to disappear and that also with the intention to screen the accused.

39. In view of the above, the order of the Trial Court directing

summoning of Inspector Yashvir Singh Tyagi for the offence under Section 201 I.P.C. and also placing the matter for framing of additional charge against the accused under Section 201/120B I.P.C. cannot be sustained and is liable to be quashed.

40. Now coming to the offence under Section 192 I.P.C., section 192 I.P.C. reads as under:-

“192. Fabricating false evidence.—Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence”.

41. For a prosecution under Section 192 I.P.C., Section 195 Cr.P.C. stipulates as under:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

*(a) ******

- (b) (i) *of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*
- (ii) *of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*
- (iii) *of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii),*

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.”

42. Section 195 Cr.P.C. bars taking of cognizance by any court of any of the offences mentioned therein except on the complaint in writing of that court or of some other court to which such court is subordinate.

43. Section 340 Cr.P.C. prescribes the procedure for cases mentioned in Section 195 Cr.P.C. *inter alia* Section 193 I.P.C. (which is the punishment for Section 192 I.P.C.).

44. Section 340 Cr.P.C. stipulates that where on an application

made to a Court, the Court is of the opinion that it is expedient and in the interest of justice, that an inquiry should be made into any offence referred to in Section 195(1)(b) committed in or in relation to a proceeding in that Court, the Court is to *inter alia* : (i) record a finding to that effect, (ii) make a complaint in writing and (iii) send it to a Magistrate of the first class having jurisdiction for trial.

45. Section 195 read with section 340 Cr.P.C. shows that cognizance of an offence under any of the section mentioned in section 195 Cr.P.C. can be taken by a court only after it has received a complaint in writing from the concerned court or from a court to which such a court is subordinate. A complaint can be made by a court after following the procedure prescribed under section 340 Cr.P.C.

46. Further, the precondition for exercising powers under Section 340 Cr.P.C is that the Court has to form an opinion that it is expedient and in the interest of justice, that an inquiry of such a nature is to be made. The Court would form an opinion as to expediency based on the material that comes before it at trial.

47. The court would, while forming such an opinion, also examine the effect and impact of such an evidence, which is alleged to be tainted. It would not be in every cases that the Court would comes to a conclusion that it is expedient and in the interest of justice, that such

an inquiry should be made. If the concerned court is of the view that the tainted material/evidence is inconsequential and would not have any bearing on the issues at hand, the court may deem it expedient not to proceed further under section 340 and 195 Cr.P.C. and may pass appropriate orders for admonishment or imposing some form of penalty or fine. However, it would depend on facts of each case.

48. In this case, no such enquiry under section 195 read with section 340 Cr.P.C. has been made by the Trial Court. There is no finding recorded by the Trial Court, as is prescribed by section 340 Cr.P.C., that it is expedient and in the interest of justice that an enquiry should be made and further the trial court has not made any complaint in writing and sent it to the Magistrate of first class having jurisdiction but has straight away sought to summon Inspector Yashvir Singh Tyagi, which is not permissible and as such the impugned order to that extent is also not sustainable and is liable to be quashed.

49. In view of the above, the impugned order dated 26.10.2018, holding that the Inspector Yashvir Singh Tyagi has *prima facie* committed an offence punishable under Section 201/192/120B I.P.C., thereafter summoning him as an accused under Section 319 Cr.P.C. for the offence punishable under Sections 201/192/120B I.P.C. and also listing the matter for framing additional charge against the

accused Rajeev Chaudhary under Sections 201/120B I.P.C., is quashed.

50. In the present case, since the trial is at the fag end and most of the evidence has already been recorded, it would be expedient for the Trial Court to form such an opinion, as required by section 340 Cr.P.C., only after the trial is concluded and final arguments are advanced.

51. In case, the Trial Court is satisfied, at that stage, that it is expedient and in the interest of justice, that such an inquiry should be made against Inspector Yashvir Singh Tyagi for allegedly committing an offence under section 192 I.P.C., it would be open to the Trial Court to make such an order and follow the course prescribed by section 340 Cr.P.C..

52. It is clarified that this Court has neither considered nor expressed any opinion on the merits of the trial in FIR No.194/2014 under Section 302 I.P.C..

53. The petitions are, accordingly, allowed in the above terms.

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

SANJEEV SACHDEVA, J

JANUARY 23, 2019/st