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

Date of decision: 08th November, 2021

IN THE MATTER OF:

+ **CRL.REV.P. 108/2021**

STATE

..... Petitioner

Through: Ms. Meenakshi Chauhan, APP for the
State with SI Surendar Singh, PS
South Campus.

versus

HASSAN AHMED

..... Respondent

Through: Ms. Rakhi Dubey with Mr.Himanshu
Gera, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 397/401 Cr.P.C is directed against the order dated 25.02.2020, passed by the learned District and Sessions Judge, Patiala House Courts, New Delhi, in SC No.58/2020 arising out of FIR No.189/2016, registered at Police Station South Campus for offences under Section 392/34 IPC. The learned District and Sessions Judge by the order impugned herein has held that the offence under Section 397 IPC is not made out against the accused/respondent herein and the matter has been sent to the learned Chief Metropolitan Magistrate for framing of charge under Section 392 IPC.

2. The factual matrix which has led to the filing of the instant petition is as under :

- a) A complaint was received from one Navi S/o Sanjiv Bhadu R/o S/466, Second Floor, Greater Kailash -I, New Delhi, stating that on 11.04.2016 at about 9 PM, four of his friends, namely, Siddhant, Suyesh, Shubham and Pranav came to meet him at his house. It is stated that at about 1:00 AM he along with his friends went to Janakpuri to drop Pranav to his work in a car bearing No. DL 1N 8064. It is stated that the complainant was driving the car. It is stated that at about 1:40 AM the complainant stopped the car at Ring Road, Dhaula Kuan, Delhi before South Moti Bagh bus stand, to buy a cigarette. It is stated that the complainant, Pranav and Suyesh got off the car. It is stated that a grey coloured Swift Dzire car came from the wrong side and parked their car behind the car of the complainant. It is stated that the occupants of the car introduced themselves as officials of Delhi Police and asked the complainant and his friends as to what they were doing there and told them to sit inside the car. It is stated that after the complainant and his friends sat in the car, one person who was about 5'7" and had wheatish complexion, threatened the complainant and his friends by brandishing a pistol and asked them to give all their belongings. It is stated that the complainant and his friends gave their belongings to those persons. On the said complaint, FIR No.189/2016 dated 12.04.2016, was registered at Police Station South Campus for offences under Sections 392/34 IPC.

- b) Accused (respondent herein) was arrested in FIR No.559/2016 registered at Police Station Malviya Nagar for offences under Sections 411/482 IPC and Sections 25/54/59 Arms Act. It is stated that during interrogation the accused gave a disclosure statement of having committed the offence in FIR No.189/2016 along with other persons who were there with him. The respondent herein refused to join the TIP.
- c) Charge-sheet has been filed stating that there is sufficient material against the respondent herein to proceed ahead against him for offences under Sections 397/34 IPC.
- d) On 25.02.2020, the learned District and Sessions Judge, Patiala House Courts, passed the impugned judgment framing charges against the respondent herein only for offences under Section 392 IPC. The learned District and Sessions Judge, Patiala House Courts, held that since the pistol had only been brandished, and it had not been used, and therefore, the offence under Section 397 IPC is not made out against the accused. Since, the offence under Section 392 IPC is triable by the learned Metropolitan Magistrate, the file was directed to be sent to the learned Chief Metropolitan Magistrate, Patiala House Courts to assign the case to its own Court or other Court in accordance with law.
- e) It is this order which has been assailed in the instant petition.

4. The question which arises for consideration in this case is whether when an act of robbery is committed by showing a revolver/pistol then does an offence under Section 397 is made out or not ?

5. Ms. Meenakshi Chauhan, learned APP for the State, submits that showing a revolver/pistol to commit robbery is sufficient to attract the provisions of Section 397 IPC. The learned APP for the State relies on the judgment of the Supreme Court in Phool Kumar v. Delhi Admn., (1975) 1 SCC 797, to contend that the judgment impugned herein is completely contrary to the laws laid down by the Supreme Court.

6. *Per contra*, Ms. Rakhi Dubey, learned counsel appearing for the accused/respondent herein contends that there is no recovery of any material which is alleged to have been robbed by the accused/respondent herein. She, therefore, states that the offence under Section 397 IPC is not made out against the respondent. It is further contended by the learned counsel for the respondent that the weapon used in the alleged incident has also not been recovered from the accused. It is further contended by the learned counsel for the respondent that the accused/respondent was arrested in some other case and he is being falsely implicated in the present case.

7. Heard Ms. Meenakshi Chauhan, learned APP for the State, and Ms. Rakhi Dubey, learned counsel appearing for the accused/respondent, and perused the material on record.

8. Section 397 IPC reads as under:

"397. Robbery, or dacoity, with attempt to cause death or grievous hurt.—If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any per-son, the imprisonment with which such offender shall be punished shall not be less than seven years."

9. The Supreme Court in Phool Kumar (supra) has observed as under:

"7. If the deadly weapon is actually used by the offender in the commission of the robbery such as in causing grievous hurt, death or the like then it is clearly used. In the cases of Chandra Nath v. Emperor [AIR 1932 Oudh 103] ;Nagar Singh v. Emperor [AIR 1933 Lah 35] and Inder Singh v. Emperor [AIR 1934 Lah 522] some overt act such as brandishing the weapon against another person in order to overawe him or displaying the deadly weapon to frighten his victim have been held to attract the provisions of Section 397 of the Penal Code. J.C. Shah and Vyas, JJ. of the Bombay High Court have said in the case of Govind Dipaji More v. State [AIR 1956 Bom 353] that if the knife

“was used for the purpose of producing such an impression upon the mind of a person that he would be compelled to part with his property, that would amount to ‘using’ the weapon within the meaning of Section 397.”

In that case also the evidence against the appellant was that he carried a knife in his hand when he went to the shop of the victim. In our opinion this is the correct view of the law and the restricted meaning given to the word “uses” in the case of Chand Singh [ILR (1970) 2 Punj and Har 108] is not correct."

(emphasis supplied)

10. A reading of the abovementioned judgment shows that the term 'use' would include brandishing the weapon against another person in order to overpower him or to frighten his victim. The Apex Court upheld the judgment of the Bombay High Court in Govind Dipaji More v. State, **AIR 1956 Bom 353**, by observing that that if the knife was used for the purpose of producing such an impression upon the mind of a person that he would be compelled to part with his property, that would amount to 'using' the

weapon within the meaning of Section 397 IPC. The Supreme Court has over-ruled the judgment of the Full Bench of the High Court of Punjab & Haryana in State v. Chand Singh, **ILR (1970) 2 Punj and Har 108**, on this aspect.

11. The fact that the weapon has not been recovered is no ground for not framing charges under Section 397 IPC. The effect of non recovery of the weapon would be seen only in trial and that cannot be a reason for not framing charges under Section 397 IPC.

12. Accordingly, the revision petition is allowed. Charges under Section 397 IPC ought to be framed against the accused. The learned District and Sessions Judge, Patiala House Courts, New Delhi, is directed to assign the case to its own Court or other Court in accordance with law.

13. With these observations, the petition is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 08, 2021

Rahul