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

Reserved on: 09th February, 2023

Pronounced on: 24th March, 2023

+ CRL.REV.P. 516/2013

STATE

..... Petitioner

Through: Mr. Utkarsh, APP for State with SI
Gaurav Tyagi, PS Prashant Vihar.

versus

SANJAY @ SURENDER KHARB

..... Respondent

Through: Mr. Ankur Sood, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('CrPC'), has been preferred by the State assailing the order on charge dated 07.02.2013, passed by the learned Additional Session Judge/Special Judge (NDPS), Outer District, Rohini Courts, Delhi, whereby, the learned Additional Session Judge /Special Judge, discharged the respondent under Sections 302/365/201/120B of the Indian Penal Code ('IPC'), in FIR No. 12/2010, registered at P.S. Prashant Vihar.

2. Briefly stated, facts relevant for adjudication of the present petition are as under:

- i. On 16.01.2010, FIR No. 12/2010, under Section 365 of the IPC was registered at P.S. Prashant Vihar at the instance of Lalit Sharma, the

brother of the deceased, since the latter was missing since the evening of 14.01.2010.

- ii. After the registration of the FIR, statements of Lalit Sharma (brother of the deceased), Kavita Sharma (sister of the deceased), Sachin Kumar, Sanchit Arora and Rupesh Gupta (friends of the deceased) were recorded. The Call Detail Record ('CDR') of the deceased and accused/suspect Devender @ Madan @ Guddu @ Rajesh were obtained and examined. The deceased had two mobile numbers – bearing SIM nos. 9811656636 and 9311839800. Accused, Devender @ Madan @ Guddu @ Rajesh used the mobile phone bearing SIM no. 9716318992. It was revealed that numerous outgoing calls were made to co-accused Sanjay Kumar on his mobile phone bearing SIM no. 9560307641, Anil Kumar on his mobile phone bearing SIM no. 9212697673 and Pradeep Tyagi on his mobile phone bearing SIM no. 9990033962, on 10.01.2010, 13.01.2010 and 14.01.2010. It was further revealed that on 14.01.2010, outgoing calls were made to deceased Komal Sharma on his mobile phone bearing SIM nos. 9811656636, 9311839800 and Sanchit on his mobile phone bearing SIM no. 9899416674.
- iii. Further, accused persons, namely, Sanjay Kumar and Anil Kumar were interrogated and the name of accused, Devender @ Madan @ Guddu @ Rajesh came to light. It was further revealed that Devender @ Madan @ Guddu @ Rajesh was convicted in case FIR No. 44/2004, under Sections 302/201 of the IPC, registered at P.S. Badli and was on bail at the time when the incident as alleged in the present FIR had taken

place. Further, supplementary statement of Sachin (friend of the deceased) was recorded and on 19.01.2010, he was shown a dossier and photograph of Devender @ Madan @ Guddu @ Rajesh was identified by him.

- iv. The police recorded the statement of Anil Kumar wherein he stated that he knew Devender @ Madan @ Guddu @ Rajesh and it was him who had forwarded number of the latter to Sanjay Kumar. It was further claimed by Anil Kumar, before the police, that Sanjay Kumar had made extra-judicial confession to him, admitting to the murder of Komal Sharma and complicity of co-accused, namely, Pradeep Tyagi and Devender @ Madan @ Guddu @ Rajesh.
- v. On 20.01.2010, the SHO of P.S. Shahabad Dairy, informed P.S. Prashant Vihar *vide* D.D. No. 13A, dated 20.01.2010, that the dead body of the deceased, Komal Sharma, was recovered which was duly identified by Sh. Harish Chander Sharma, the father of the deceased. Post-mortem of the deceased was conducted at Mortuary, Babu Jagjivan Ram Memorial Hospital and the cause of death was opined asphyxia, and he was stated to have sustained homicidal injuries. Subsequently, inquest report was obtained and Sections 302/201/120B of the IPC were added to FIR No. 12/2010, registered at P.S. Prashant Vihar.
- vi. On 25.01.2010, Sanjay Kumar (co-accused) was arrested and interrogated. It was alleged that he confessed to his involvement in the murder of the deceased. His confession is reproduced as under:

“He is friend of Pradeep Tyagi since school time. Pradeep Tyagi loved (one sided) to one girl namely Indu Tyagi and Komal Sharma was also loved to the same girl. On instruction of Pradeep Tyagi he arranged a meeting between Pradeep Tyagi and Devender@Madan Lal Bansal@Guddu and a deal of Rs. 2 Lac for killing of Komal Sharma was finalized. Pradeep Tyagi gave all the detail of Komal Sharma and his telephone number to Devender @Madan. Rs. 30,000/- was given before the murder of Komal Sharma & Rs. 1,70,000/- was given to Devender @Madan after the murder of Komal Sharma by Pradeep Tyagi.”.

- vii. After completion of investigation, on 24.02.2010, chargesheet was filed *qua* Sanjay Kumar under Sections 365 /302 /201 /120B of the IPC.
- viii. Proceedings under Section 82 of the CrPC were initiated against Pradeep Tyagi and subsequently, he was arrested on 09.04.2010. It was alleged that during his interrogation, he confessed that he had hired, co-accused Devender @ Madan @ Guddu @ Rajesh with the help of Sanjay Kumar and got Komal Sharma killed as he was in love with one, Indu Tyagi.
- ix. The learned ACMM, Rohini Court, Delhi, on 30.04.2010, declared Devender @ Madan @ Guddu @ Rajesh as a proclaimed offender. The supplementary chargesheet was filed *qua* accused Pradeep Tyagi, on 08.08.2010. Subsequently, the learned trial Court framed charges against Sanjay Kumar and Pradeep Tyagi, under Sections 302 and 120B of the IPC, on 18.10.2010.
- x. Devender @ Madan @ Guddu @ Rajesh was arrested on 22.05.2012.
- xi. It was further revealed from the analysis of the CDR, that Sanjay Kumar, Devender @ Madan @ Guddu @ Rajesh and Pradeep Tyagi were in constant touch with each other, prior to and after the death of Komal Sharma. On 01.08.2012, chargesheet *qua* Devender @ Madan

@ Guddu @ Rajesh was filed and on 31.08.2012, charges were framed *qua* him under Sections 302 and 120B of the IPC by the learned trial Court.

- xii. The respondent herein was arrested on 18.10.2012 and chargesheet *qua* him was filed under Sections 302/365/201/120B of the IPC.
- xiii. At the stage of framing of charge, the learned ASJ/ Special Judge (NDPS), Outer District, Rohini Courts, Delhi, discharged the respondent in FIR No. 12/2010, under Sections 302/365/201/120B of the IPC registered at P.S. Prashant Vihar, *vide* order dated 07.02.2013.
- xiv. Aggrieved by the said order on charge, the present petition has been preferred.

3. The learned APP for the State submits that at the stage of framing of charge, the learned trial Court did not appreciate the disclosure statement of co-accused Devender @ Madan @ Guddu @ Rajesh, wherein he stated that he alongwith the respondent had taken the deceased away in a white Satro car and after committing the murder of the deceased, the respondent took away the belongings of the deceased in the car. The aforesaid car was recovered from the respondent by a team of the Crime Branch.

4. It was further submitted that the motive of the murder was within the knowledge of the respondent and he joined the criminal conspiracy by accompanying accused Devender @ Madan @ Guddu @ Rajesh and further shared the *booty* (money) which the latter received from accused Pradeep Tyagi, after the murder of the deceased.

5. *Per contra*, the learned counsel appearing on behalf of the respondent submitted that the respondent was initially not named in the present FIR. He

was subsequently arrayed as an accused in 2012. It was further submitted that there is no evidence against the respondent, except the inadmissible confessional statements made before the police by the accused Devender @ Madan @ Guddu @ Rajesh and the respondent himself.

6. It was submitted that the witness Sachin Kumar, who was a friend of the deceased, in his statement under Section 161 of the CrPC stated that he had seen the deceased getting into a white Santro car with accused Devender @ Madan @ Guddu @ Rajesh and no other person was present in the car other than the said accused and the deceased, Komal Sharma.

7. It was further submitted that the disclosure statement of Devender @ Madan @ Guddu @ Rajesh is inadmissible and that the disclosure of the respondent allegedly pointing out the spot where the body of the deceased was disposed of has no evidentiary value as the body had already been recovered by the SHO of P.S. Shahabad Dairy, on 20.01.2010, which was much prior to the arrest of the present respondent on 18.10.2012.

8. It was submitted by the learned counsel appearing on behalf of the respondent that the only evidence with respect to white Santro car alleged to have been recovered from the respondent were the disclosure statements of the accused/respondent.

9. In support of his submissions, the learned counsel for the respondent relied upon the following judgments:

(a) Sarwan Singh v. State of Punjab, (2003) 1 SCC 240

(b) Pancho v. State of Haryana, (2011) 10 SCC 165

10. Heard the learned counsel for the parties and perused the records.

11. The learned Additional Session Judge, *vide* the impugned order on charge dated 07.02.2013, has observed as under:

“6. Only two kinds of material are against the accused Surender Kharab. First is the disclosure statement of co-accused Madan Lal and his own disclosure statement. Second is the pointing out place where the dead body was thrown. Admittedly, nothing was recovered pursuant to the disclosure statement of the accused Surender Kharab. So, as per Section 25 of Indian Evidence Act that confessional statement is not admissible in evidence. The second kind of material i.e. pointing out of the place where the dead body was thrown is a weak kind of evidence. Moreover, it was already in the knowledge of the police, so that place cannot be said to be a fact disclosed consequent to his pointing out. Sachin Kumar is the witness of last scene of the deceased Komal Sharma in the company of accused Madan Lal. He nowhere stated u/s 161 Cr.P.C that accused Surender Kharab also came to the Japanese Park in the company of the accused Madan Lal. He nowhere stated that the registration number of the white Santro car. There are several thousand white Santro cars in the Delhi and NCR. There is nothing available on the record, which may suggest that car used by Surender Kharab was the same, in which, deceased Komal Sharma was taken by accused Madan Lal @ Guddu.

7. Above discussed shows that there is not an iota of material against accused Surender Kharab, which can be said to be of any evidenciary value and hence, he is discharged. ”

12. It is not the case of the prosecution that the learned ASJ, while passing the impugned order has not considered the material on record which links the respondent with the crime. Admittedly, the evidence considered by the learned ASJ was all that was sought to be relied upon by the prosecution in the chargesheet. The said evidence has been carefully and meticulously scrutinized by the learned ASJ before passing the impugned order.

13. It is well settled that the scope of exercise of powers under Section 397 CrPC is limited. The revisional Court is only required to satisfy itself of the correctness and legality of the findings in the impugned order. The Court must exercise jurisdiction under Section 397 CrPC only when the decision against which the revision is directed is perverse in law and has been passed by not correctly appreciating or ignoring evidence on record.

14. The Hon'ble Supreme Court, in *Dilawar Balu Khurane v. State of Maharashtra*, (2002) 2 SCC 135 has observed that while framing charges, the Judge has the power to ascertain whether the materials on record disclose 'grave suspicion' against the accused, which has not been explained. It has been held as under:

"12. 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 v. Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609])."

15. In view thereof, this Court does not find any illegality or infirmity in the impugned order. The learned ASJ, based on the material on record, has rightly discharged the respondent herein for offences punishable under Sections 302/365/201/120B of the IPC, in FIR No. 12/2010, registered at P.S. Prashant Vihar.

16. In view of the facts and circumstances of the case, this Court finds no reason to interfere with the impugned order. The present revision petition is dismissed and disposed of accordingly.

17. Pending applications, if any, also stand disposed of.

AMIT SHARMA
JUDGE

MARCH 24, 2023/sn

