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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 9th August, 2024***+ **CRL.REV.P. 398/2024 & CRL.M.A. 9077/2024 (stay)**

ANKUSH & ANR.

.....Petitioners

Through: Mr. Gaurav Sahrawat, Mr. Deepak Malik and Ms. Neha Dubey, Advocates.

versus

STATE

.....Respondent

Through: Ms. Richa Dhawan, APP for State (through VC)

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The petitioners Ankush and Shivanu, who are real brothers by way of the Revision Petition under Section 397 and 401 read with Section 482 Cr.P.C. has challenged the Order dated 04.01.2024 vide which the Charges under Section 307/34 IPC against both & in addition, Charge under Section 27 Arms Act against petitioner No.2 Shivanu, has been framed.
2. ***Briefly stated***, the story of prosecution is that on 19.10.2017 at about 08:25 P.M. while complainant Shekhar Baghel along with his cousin brother Dev Singh, were sitting behind the wine shop in DDA Market, GH-5/7, two boys aged about 25 to 35 years, out of which one resembled as a Sardar wearing a black turban, came near them and asked for a match stick to light



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a cigarette. Dev Singh who was smoking the cigarette, tried to pass the matchbox to the boy who had started his bike when the Sardar boy sitting on the pillion seat, took out his pistol and shot at Dev Singh which pierced his stomach. The second bullet stuck Dev Singh's left thigh. The two boys threatened to kill the complainant Shekhar Baghel in Punjabi and the Sardar boy also fired at the complainant but he was able to dodge the bullet. The complainant managed to make noise and run and was unable to note down the bike number. Some people arrived at the spot. However, the two assailants fled on their motorcycle.

3. The injured Dev Singh was taken to the hospital and treated for the gunshot injury on left side of his chest, his left thigh and his thumb. He underwent surgery for the removal of the bullet and remained admitted in the hospital. The Doctor opined the *nature of injury to be grievous*.

4. On the complaint of Shekhar Baghel dated 19.10.2017, FIR under Section 307/34 IPC and 25/27/54/59 Arms Act was registered. The complainant joined the investigation to trace the accused persons, but did not succeed. The statement under Section 161 Cr.P.C of one eye witness Himanshu, was recorded on 23.10.2017, who stated that on the date of incident he was roaming around the street, when he noticed the two boys who were 25 to 30 years old one of whom one of them was wearing a black turban, roaming suspiciously on a bike. Himanshu helped the I.O to prepare the sketch of Sardar boy who was wearing the black turban. He tried to trace the assailants from the sketch and interrogated various people in and around the area; searched for the accused and collected CCTV footage and analysed CDR form of injured Dev Singh's mobile, but could not get establish their identity. Despite best efforts, there was no clue about the



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assailants and *the Untraced Report* was filed before the learned M.M. on 15.10.2018.

5. After about one year of submitting the Untrace Report, the complainant gave a fresh complaint dated 15.10.2019 in PS. Mianwali Nagar, wherein he gave the names of the two petitioners as the assailants with an explanation that he refrained from disclosing their names to the police in the first instance as they both have multiple cases registered against them and that they fear their safety at the hands of the perpetrators.

6. The petitioners were formally arrested by the I.O on 20.11.2019 and eventually Chargesheet was filed against them in the Court. The learned ASJ, District Court, framed the Charges under Section 307/34 IPC against both the petitioners and additional charge of Section 27 Arms Act against petitioner No.2.

7. The ***Order on Charge has been challenged*** on the ground that the complainant in the first instance did not disclose the name of the assailants. The sketch had been prepared at the instance of the eye witness, but still the identity of the assailants could not be established, leading to filing of untrace Report. The assailants were not named in the initial complaint but were named for the first time in the subsequent complaint dated 15.10.2019 which was filed after two years, despite the petitioners being known to the complainant and injured for the last 14 years and had been friends on social media platforms.

8. It is claimed that the complainant has roped them in the present case at the instance of one Shravan Kumar Yadav for whom the complainant, injured and both the petitioners used to work as associates in the business of sale purchase of the properties. The petitioners had filed numerous police



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complaints against Shravan Kumar Yadav and his accomplices in connivance with police officials tried to grab Shop No.18, Tilak Nagar Market, New Delhi.

9. It is further submitted that in regard to this instance of grabbing of the shop in Tilak Nagar, a forged SPA dated 21.03.2017 had been prepared by Shravan Kumar Yadav and his accomplices along with the complainant for the purpose of filing the Execution Petition and they took the keys of the shop of the petitioner in the year 2017 for which one FIR No.274/2019 under Section 420/467/468/471/34 IPC has been registered in Police Station Tilak Nagar. Despite the FIR disclosing cognizable offences, no arrest has been made of any of the persons.

10. Apprehending false implication in a false case of rape at the instance of Shravan Kumar Yadav and his accomplices, the petitioners have made various complaints dated 19.09.2017, 23.10.2017 and 12.11.2018 to the police.

11. It is claimed that the petitioners had been compelled by the police officials of P.S. Hari Nagar and P.S. Paschim Vihar (West) to sign bunch of judicial and non-judicial stamp papers. The entire conspiracy is claimed to have been hatched by Shravan Kumar Yadav along with the complainant, who planted a known girl in order to implicate the petitioner in a false case of rape registered vide FIR No.336/2019, P.S. Hari Nagar. It is further contended that petitioner No.2 was arrested on 18.08.2019, however, petitioner No.1 was arrested at the instance of Shravan Kumar Yadav on 09.11.2019 and his formal custody was taken in the present FIR.

12. Learned ASJ failed to appreciate that the TIP application moved by the I.O dated 21.11.2019 had been dismissed by learned M.M by observing



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that the petitioners had been produced with an unmuffled face and were known to the complainant for the last 14 years. The PC remand for recovery of alleged weapon of offence had also been declined by the learned M.M vide Order dated 23.11.2019 with the observations that the FIR was of the year 2017 and the possibility of planting the case property could not be ruled out especially because no fired shells had been recovered from the spot by the Crime Team.

13. It is asserted that the I.O himself was negligent in collecting the medical evidence as only one deformed bullet that was recovered from the injured had been sent to FSL.

14. It is claimed that the learned ASJ has failed to consider all these facts while framing the charges.

15. Reliance has been placed on State vs. Nitin (2019 SCC Online Del 7239); X and Anr. Vs. State & Anr. (Crl. Rev. 308 of 2017); State vs. Arun Kumar & Anr. (2014 SCC Online SC 1018); Raghunath vs. State of Haryana, (AIR 2003 SC 165); Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra ((2008) 10 CC 394); Union of India vs. Prafulla Kumar Samal (1979 AIR (SC) 366); Alamohan Das vs. State of West Bengal (1969 AIR (SC) 863); State of Bihar vs. Ramesh Singh, (1977 AIR SC 2018); Niranjan Singh Karam Singh Punjabi etc. Vs. Jitendra Bhimraj Bijjaya and Ors. ((1990) 4 SCC 76); State of Bihar vs. Ramesh Singh (1977 AIR (SC) 2018); Suptd. And Remeberancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunja ((1979) 4 SCC 274); and Sajjan Kumar vs. CBI, (2011 ALL SCR 24), wherein it has been observed that when there are two views possible from the evidence on record, the benefit should accrue to the accused.

16. It is, therefore, submitted that the aforesaid circumstances clearly



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reflect that the petitioners have been falsely implicated in this case and they are entitled to be discharged.

17. ***Learned Additional Public Prosecutor has defended the Order of Charge*** dated 04.01.2024 by asserting that the merits and demerits of the evidence collected during the investigations, cannot be sifted and considered minutely and whether the offence is proved to have been committed, shall be determined after the trial. At the time of framing of charge, only the prima facie view on the basis of the evidence collected, has to be taken.

18. In the present case not only the injured had suffered the bullet injury which corroborates the happening of the incident, but the names of the accused persons had been disclosed even though belatedly, they have tendered the explanation of not being initially able to give the names. There is enough prima facie material for framing of charge. There is no illegality in the impugned Order and the present petition is liable to be dismissed.

19. **Submissions heard and record perused.**

20. It is an established preposition of law that at that time of framing of charge, the entire evidence as collected by the Investigating Agency may be considered to have a prima facie view and if there is sufficient material disclosed in the Chargesheet for the charges to be framed and the trial to proceed. At this stage, no minute analysis of the evidence collected has to be undertaken to consider whether the accused persons would finally be acquitted or convicted.

21. In this backdrop, the facts as agitated in the present petition, may be considered. Undeniably the incident happened on 19.10.2017 when the complainant and the injured Dev Singh were shot at by the assailant who was wearing a black turban and looked like a Sardar. Dev Singh suffered



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three bullet injuries while the complainant was able to dodge it. The assailants after shooting, sped away on their motor cycle.

22. Shekhar Baghel gave the complaint on 19.10.2017, wherein he stated *that two unknown assailants* had fired at them. In an endeavour to trace out the assailants, a sketch was also prepared at the instance of the eye witness Himanshu. Despite the sketch, the assailants could not be traced. Moreover, the I.O tried to search out from the CCTV cameras, the CDRs of the injured and the complainant and in the entire neighbourhood to identify the assailant, but to no success.

23. The investigations were carried out not by one but three I.Os, who all met with no success in identifying the assailants. Left with no option, an Untrace Report was filed after one year of efforts, in the Court on 15.10.2018. Thereafter, it had taken one more year to the complainant to file an additional complaint on 15.10.2019, wherein the names of the two assailants who are the petitioners herein, were disclosed.

24. What is significant to observe here is that these two assailants had been known to the complainant for more than 14 years. The complainant along with the injured and two petitioners had been working with one Shravan Kumar Yadav and were in the business of property dealing. The police remand got denied by the learned M.M. for this reason as the assailants were already known to the complainant and the injured. Significantly, once the alleged assailant were known to the known, there is no explanation forthcoming as to why they did not name them in the first complaint itself which was made two years prior to the second complaint.

25. A lame explanation has been tendered that they feared for their life. However, the same fear would have continued to linger in 2019 when the



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subsequent complaint was made. No complaint whatsoever, had ever been made by them to the police about their apprehension of threat or fear. From the petitioners. On the other hand, the two petitioners had made various complaints dated 19.09.2017, 23.10.2017 and 12.11.2018 to the police apprehending their implication in false cases by the complainant in connivance with Shravan Kumar Yadav. This apprehension ultimately did prove correct, when an FIR No.336/2019 dated 18.07.2019 was registered against them under Section 376/506/34 IPC P.S. Hari Nagar.

26. It is soon thereafter, that the subsequent complaint dated 15.10.2019 was filed, wherein the petitioners have been named. The inordinate delay in making the complaints despite the assailants being known to the complainant and the injured for past 14 years, is a circumstance which clearly points out to the false implication of the petitioners. There is no explanation whatsoever for such belated naming of the two petitioners except that they have been falsely named with a *malafide* intention subsequently.

27. Pertinently, the sketch of the assailant had been prepared at the instance of eye witness Himanshu, but that sketch does not find any mention in the Chargesheet. There is not a single averment that the two petitioners who have been arrested, have any resemblance to the poster that got initially prepared.

28. The investigations conducted in the present case also leave much to be said. There were three bullets that were fired at the injured, one at the chest, the second on the left thigh and third on the thumb. Only one retrieved bullet had been sent to FSL with there being no explanation of what happened to the other two bullets. The incident of firing stands



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corroborated by the recovery of the bullet from the body of the injured. If so was the case, there would have been empty shells which would have fallen on the scene of crime. Pertinently, the I.O has chosen not to conduct the investigations to retrieve the shells from the spot which could have in some way, benefitted the investigations.

29. The FSL Report in regard to the retrieved bullet can be of little assistance or be termed as incriminating evidence in the absence of recovery of the weapon of offence. The PC remand had been refused by the MM for the alleged recovery of weapon by observing that after two years the possibility of false planting of the weapon could not be ruled out. It is also significant to observe that along with the PC remand, only half of the page of the alleged disclosure made by accused Shivanu had been filed. On specific query by the Id. M.M. as to why the second page was not available, it was revealed that the petitioner/ accused Shivam had refused to sign the Disclosure Statement recording that he can get the weapon recovered, which again indicates that I.O somehow had tried to implicate the petitioners by fabricating the Disclosure Statement, which in fact was never made by Shivanu.

30. The entire gamut of facts, whereby the assailants despite being known to the petitioners, were not named for two years and subsequently the petitioners not only got implicated in one FIR No.336/2019, but significantly it is only thereafter that they had been named in the subsequent complaint.

31. Pertinently, when the initial Untrace Report had been filed on 15.10.2018 as the identity of the accused could not be established, the complainant had appeared before the Ld. MM and had taken no objection to



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the case being closed as untraced. There could possibly be no reason to disclose the names of the petitioners, at least at that stage.

32. Clearly, it is more than evident from the record, the subsequent complaint and the manner in which they have been made that there is no incriminating evidence against the petitioners. It is a fit case where even a prima facie case is not made out against the petitioners on the basis of the evidence collected by the I.O. In such cases, where the false implication is writ large, no fruitful purpose would be served in making the petitioners go through the entire trial which in fact, would be a travesty of justice. The Courts cannot be the silent spectators or a loudspeaker to echo whatever has been presented before it in the Chargesheet.

33. The petition is, therefore, allowed and the petitioners are hereby discharged. The Order of Charge dated 04.01.2024 is hereby set aside.

34. The Revision Petition is accordingly disposed of along with pending application, if any.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 9, 2024
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