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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 8736/2023**

KUSUM RAJPUT

..... Petitioner

Through: Mr. Satya Ranjan Swain, Mr. Ankush Kapoor with Mr. Ankush Kapoor, Advocates.

versus

STATE (N.C.T. of DELHI)

..... Respondent

Through: Mr. Aashneet Singh, APP for State with SI Parveen Rathi, P.S. South Avenue, New Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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05.09.2024

1. By way of the present petition, the petitioner seeks quashing of FIR No. 57/2021 under section 448/34 IPC, 184 & 185 MV ACT & 3 PDPP Act registered at PS South Avenue, Delhi alongwith the chargesheet filed under Section 448/34 IPC against the present petitioner and consequential proceedings emanating therefrom.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and the allegations against the petitioner are wrong and baseless. It is submitted that the co-accused/*Shivam* was driving the car and the petitioner was merely a passenger who was not even guiding the co-accused to take such a route. The petitioner believes that the co-accused/*Shivam* took the route as reflected in the Google Maps. It is further submitted that the petitioner was not intoxicated. It is stated that the

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police failed to establish any *mens rea* on part the petitioner, nor is there any *actus reus* attributable to her. Additionally, the General Diary updated by the police indicates that police stated that the incident took place on 15.11.2021 and the petitioner was arrested by the police two days later i.e., on 17.11.2021. The police have failed to establish the undue two days delay caused.

It is further stated that offence under Section 442 IPC is also not made out against the petitioner as the best case of the prosecution is that the petitioner/non driver entered into gate 35 and left from gate 17, meaning thereby that they have not entered the building of the Rashtrapati Bhawan and only surpassed the compound. In support, reliance has been placed on the decision of Supreme Court in **Criminal Appeal No. 278/1997** titled Vidyadharan v. State of Kerala. Furthermore, it is stated that since there was no common intention between the petitioner and her driver friend to allegedly enter the Rashtrapati Bhawan therefore, no offence under section 34 is made out against the petitioner. Lastly, it is submitted that since the Investigating Officer has already accepted the fact that the petitioner was not driving, Sections 184 & 185 of the Motor Vehicles Act, 1988 were dropped against the petitioner. Therefore, the petitioner seeks quashing of the present petition by placing reliance on the judgement of Supreme Court in the case of Parbatbhai Aahir & Ors v. State of Gujrat & Anr reported as **2017 (9) SCC-641** and Sundar Babu & Ors v. State of Tamil Nadu reported as **2009 (14) SCC 244**.

3. Learned APP for the state opposes the present petition and submits that both the occupants in the car forcefully and unauthorizedly entered the President's Estate without any reason therefore, strict action may be taken



against them. He further submits that co-accused/*Shivam* was arrested on the day of registration of the FIR i.e., 16.11.2021 and the present petitioner could not be arrested due to evening hours. Hence, she was arrested on the very next day on 17.11.2021.

4. I have heard the learned counsels for the parties and perused the material available on record.

5. A perusal of the FIR reveals that vehicle No. DL-8CAA-2639 trespassed through Gate No. 35, R.P. Bhawan, New Delhi, on 15.11.2021, at around 11:35 PM. ASI Kailash Dutt, who was on duty at Gate No. 35, reported via W/T set that the high-speed car with the said number had hit and damaged a barricade while entering from Gate No. 35 and it should be stopped. The car was subsequently stopped at Gate No. 17, and its occupants were identified as one *Shivam*, who was driving, and the petitioner, who was seated as a passenger. It was noted that both the occupants forcefully and unlawfully entered the President's Estate without any reason. The driver was found intoxicated and was sent for MLC and thereafter, taken into custody. The FIR was registered against the accused persons under Sections 448/34 IPC, 184 & 185 MV Act, and Section 3 of the PDPP Act, 1984. Following investigation, the chargesheet was filed under these sections against the co-accused. However, as the petitioner was not driving, she was prosecuted only under Sections 448 and 34 IPC.

6. The ingredients of section 34 of IPC are : -

- (1) A criminal act is done by several persons;
- (2) The criminal act must be to further the common intention of all;
- (3) There must be participation of all the persons in furthering the common intention.



7. Now to examine the aspect and adjudge whether the act was carried out in furtherance of a common intention, it is important to consider all the facts and circumstances of the case rather than focusing on a single fact. There exists no straight-jacket formula for applying the principles of common intention. The inference regarding the presence of common intention in committing a specific act must be drawn from the entirety of the facts and circumstances of each case. To hold an accused constructively liable under Section 34 of the IPC for a criminal act committed by another, it is essential to establish that the act was performed in accordance with a pre-arranged plan. Undoubtedly, it is not possible to procure direct evidence to prove the intention of the accused sought to be convicted with the aid of Section 34, therefore, in most of the cases the intention of such a person is gathered from the relevant facts and circumstances surrounding a particular case.

8. In the present case, on a cumulative reading and appreciation of the entire evidence on record, it is evident that the present petitioner was merely a company to the co-accused, and did not share any common intention inasmuch as neither she guided the co-accused/driver of the car to take a particular route nor had any motive to engage in such a conduct. Moreover, the petitioner was not intoxicated, and there is no incriminating, unimpeachable, or cogent evidence against her that would connect her to the commission of the alleged offence. Additionally, as it can be deduced from the CCTV footage and other evidence presented, that the petitioner was simply a passenger in the vehicle, which only passed through the compound without attempting to enter the building and remained approx.1.5 kms away from the President's Estate. It is clear that there was no prior meeting of



minds between the petitioner and the driver of the car. As such, the necessary ingredients of the offences charged are not made out against the petitioner and continuation of proceedings against her will be an abuse of process.

9. Accordingly, the petition is allowed and the FIR in question alongwith the consequent proceedings arising therefrom are quashed qua the petitioner.

10. The petition is disposed of. Miscellaneous application is disposed of as infructuous.

MANOJ KUMAR OHRI, J

SEPTEMBER 05, 2024

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