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

+ **CRL.REV.P. 1371/2024**

AKASH KUMAR & ORS.Petitioners
Through: Mr. Kumar Sanu
Chaudhary, Adv.

versus

THE STATE (NCT OF DELHI)Respondent
Through: Mr. Utkarsh, APP for the
State
SI Salman Ahmad, PS-
Hauz Khas

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
19.12.2024

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CRL.M.A. 38270/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.REV.P. 1371/2024 & CRL.M.A. 38269/2024 (for stay)

3. The present petition is filed challenging the order on charge dated 20.09.2024 (hereafter '**impugned order**'), passed by the learned Trial Court, in SC No. 242/2023 arising out of FIR No. 51/2023, registered at Police Station Hauz Khas.

4. By the impugned order, the learned Trial Court found that there was sufficient material to proceed against the petitioners for the following offences:

- a. Petitioner No.1– charged for offences under Sections 307/395/411/201/120B of the Indian Penal Code, 1860 ('**IPC**').
- b. Petitioner No.2– charged for offences under Sections



307/397/395/411/457/459/120B of the IPC and Section 27 of the Arms Act.

c. Petitioner No.3 – charged for offences under Sections 307/397/395/411/457/459/120B of the IPC.

5. The FIR was registered on a complaint by the complainant, namely, Om Prakash, who runs a shop of *pooja* items. It is alleged that on the intervening night of 21.01.2023 and 22.01.2023, at around 02:45 AM, after the complainant had locked his shop from inside and gone to sleep, someone suddenly hit him on his head with some iron object. When the complainant stood up, two boys immediately caught hold of him. One of them was carrying a pistol and the other had a hammer. It is alleged that both of the boys started hitting the complainant on his head with the butt of the pistol and the hammer and repeatedly asked him for the key of the shop's locker. It is also alleged that the boy who was carrying the pistol kept threatening that he will shoot the complainant on his head.

6. On being scared, the complainant handed over the keys of the shop's locker to them. It is alleged that ₹16,25,000/- of cash was looted from the locker.

7. It is the case of the prosecution that the accused persons, including the petitioners had conspired to commit the robbery. It is alleged that Petitioner Nos. 2 and 3 were the boys who had entered the complainant's shop and beaten him with a hammer and pistol like object. Petitioner No.1 and co-accused Gagandeep were standing outside the shop.

8. The learned Trial Court, in the impugned order, observed that a part of the looted amount had been recovered from the possession of the accused persons. It was also noted that during



investigation, the record of certain telephonic conversations were found between the accused persons and certain audio and video clips of the CCTV footage near the place of the incident were also collected.

9. Among other charges, the Court opined that from the material available in the chargesheet, there was sufficient material for proceeding against the petitioners for the offence under Section 395 of the IPC.

10. Section 395 of the IPC provides for the punishment of dacoity and Section 391 of the IPC defines 'dacoity'. The same reads as under:

"395. Punishment for dacoity.

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

"391 Dacoity

When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

(emphasis supplied)

11. It is argued that Section 391 of the IPC clearly states that it is only when five or more persons conjointly commit or attempt to commit the robbery, then every person so committing, attempting or aiding, is said to commit dacoity.

12. It is further submitted that even though five persons have been charge sheeted in the present case, however, it is not the case of the prosecution that the 5th accused, namely, Lalit, was a part of the conspiracy to commit the dacoity/ robbery. The only role attributed to the accused Lalit is that he had harboured these four accused persons after the commission of the crime. It is not



alleged that Lalit also conspired or aided in commission of robbery.

13. A bare perusal of the impugned order shows that the above noted arguments have not been considered by the learned Trial Court while passing the impugned order.

14. It is also undisputed that a toy gun was used for commission of alleged offences and, therefore, the same may not be covered under the definition of the Arms Act.

15. Further, it is also the contention of the petitioner that charges under Section 307 of the IPC cannot be framed since there is no attempt to murder. It is submitted that even if the case of the prosecution is taken at the highest, the injury was caused for the purpose of robbery and the injuries were not of such nature that could have caused the death of the complainant.

16. Considering the aforesaid discussion, this Court considers it apposite to set aside the impugned order and remand the matter back to the concerned Court of Sessions for fresh consideration.

17. List before the concerned Court of Sessions on 15.01.2025 for fixing a schedule for considering the arguments on charge afresh.

18. The copy of the order be sent to the learned Principal District and Sessions Judge, Saket Courts for necessary compliance.

19. The impugned order dated 20.09.2024 is set aside and the petition is allowed with aforesaid observations.

AMIT MAHAJAN, J

DECEMBER 19, 2024

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