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

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Date of decision: 24th March, 2025

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CRL.M.C. 227/2018

SUNIL DABAS
S/O LATE SH. DAYANAND
R/O H.NO. 115,RANIKHERA,
NEW DELHI-110081

.....Petitioner

Through: Mr. K.K.Manan, Sr. Advocate with
Ms. Udit Bail, Mr. Karmanya Singh
Choudhary, Ms. Savita Sethi, Ms.
Yakshi Kataria and Ms. Nandini Ohri,
Advocates

Versus

1. STATE (THE NCT OF DELHI)Respondent No.1

2. CHINTADEVI

W/O LATE SH. GHANSHYAM PRASAD
R/O H.NO. D-129, PARVESH NAGAR,
MUBARAKPUR, DELHI

.....Respondent No.2.

Through: Mr. Yudhvair Singh Chauhan, APP for
the State with Insp. Jitender Joshi,
P.S.Aman Vihar and ACP, Rajender
Prasad, Traffic.
Mr. Satish Kumar Tripathi, Adv. for
R-2 along with R-2 in person.

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

1. The present Petition under Section 482 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' hereinafter) has been filed seeking quashing of Order dated 09.06.2017, whereby Petitioner has been summoned for



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commission of offence under Section 302 of the *Indian Penal Code, 1860* ('IPC' *hereinafter*) read with Section 120B IPC, by the learned Additional Session Judge under Section 391 Cr.P.C. in case FIR No.1412/2015, under Section 302 IPC read with Sections 25/27 *Arms Act, 1959*, Police Station Aman Vihar, Delhi.

2. ***Briefly stated***, on 12.11.2015 on the information received through a PCR call that a man has been shot at Mubarakpur, Parvesh Nagar, Kirari, the present FIR was registered under S.302 IPC read with Sections 25/27 *Arms Act, 1959*, Police Station Aman Vihar, Delhi.

3. Investigation was conducted and thereafter, Charge-Sheet was filed in the Court on 07.02.2016 against two accused. However, name of the Petitioner was not mentioned in the Charge-sheet. Subsequently, at the stage of final arguments, i.e. after about two years of commencement of trial, the Petitioner was summoned *vide* Order dated 09.06.2017 under Section 319 Cr.P.C.

4. ***The impugned Summoning Order dated 09.06.2017 under Section 319 Cr.P.C. has been challenged by the Petitioner*** on the ground that there is no material to prove the allegations of murder against the Petitioner, as there are only three eye witnesses and none of the witnesses has deposed qua the Petitioner. The Petitioner has been summoned on one line in the deposition of the PW-18 Smt. Chinta Devi Complaint in examination-in-chief, that she had met the Petitioner on the day of incident while she was rushing to the spot who asserted that he has taken his revenge, even though his name did not feature in her statement recorded under Section 161 Cr.P.C.



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5. It is submitted that the Complainant /PW-18 has improved her version and disclosed Petitioner's name in during her examination-in-chief.
6. Petitioner has asserted that investigating Officer, Rajinder Prasad (PW-23) in his examination-in-chief has stated that "*the CDRs were thoroughly analyzed and it was learned that there was no involvement of Sonu Dabas, more so in view of the statement of the eye witness*". It is asserted that there is no evidence on record to indicate the involvement of the Petitioner in the alleged commission of offence. Therefore, prayer is made that the impugned Summoning Order dated 09.06.2017 be set aside and he be discharged of the offences with which he has been charged.
7. ***The Prosecution, in its Status Report***, has detailed about registration of the FIR and the investigation carried by the Investigating Officer. It is pointed out that during investigation *Anil @ Bahuwa @ Hakla* was arrested on 13.11.2015, who in his Disclosure Statement stated that he had taken the pistol from *Sherkhan*, which was used in the commission of crime and the motorcycle was taken from *Manjar @ Munna*. PC remand of *Sherkhan* was taken to recover the weapon of offence, but was not found. After completion of investigations, Charge-Sheet was filed against the accused *Anil @ Bahuwa @ Hakla*.
8. During further investigation, weapon of offence i.e. pistol was recovered at the instance of *Sherkhan*, which was sent to FSL for opinion and *Sherkhan* was sent to JC. As per FSL result, the recovered pistol was the same weapon which was used in murder of deceased *Ghanshyam*.
9. It is also stated in the *Status Report* that the Complainant- Chinta Devi



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(PW-18), wife of deceased *Ghanshyam*, in her testimony deposed before the Court that on 11.11.2015 at 01:15 am, she received a call from her neighbor Sanjay on her husband's phone, who asked her to reach the *chowk* in front of *gali*, as her husband was shot. She immediately went there along with her children and on the way, Petitioner- *Sunil Dabas @ Sonu*, met her who told her that he had taken the revenge. She reached the *chowk* and found that her husband was lying in serious condition and when she asked from her husband, he told that *Anil Hakla* had shot him at the instance of *Sunil Dabas @ Sonu* for taking revenge.

10. It is submitted in the Status Report that the Investigating Officer had recorded statement of Complainant *Chinta Devi* under Section 161 Cr.P.C. on 12.11.2015, but these facts were not mentioned and are thus, not mentioned in the Charge-Sheet.

11. During the course of trial, twenty-five prosecution witnesses have been examined and accused *Anil Hakla* was sentenced to rigorous imprisonment for life, which was set aside by the Division Bench of this Court vide Judgment dated 16.03.2023. However, the learned Trial Court has summoned the Petitioner for the offence under Section 302 IPC read with Section 120 B IPC, which is justified and does not call for any interference by this Court.

12. ***Respondent No.2, Chinta Devi, Complainant in her Reply*** has asserted that the present Petition is gross misuse of process of the law, as the Petitioner has concealed the material facts. It is claimed that the Petitioner is the master mind of killing her husband *Ghanshyam*, because he was a



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prosecution witness in case FIR No. 378/2013, under Sections 420/468/471/120B IPC, registered at Police Station Aman Vihar, Delhi, against the Petitioner and his associates, namely, *Anil & Bahwa & Hakla, Sher Khan and Sobran Singh*, who had threatened him of dire consequences. Thereafter, they killed her husband which resulted in registration of the present FIR, but only against *Anil & Bahwa & Hakla, Sher Khan and Sobran Singh* and no action was taken against the Petitioner- *Sunil Dabas @ Sonu*, who was the master mind of murder of her husband. Neither his name was given in the FIR nor any enquiry was conducted against him.

13. Thereafter, Respondent No.2 moved an Application under Section 319 Cr.P.C. before the learned Metropolitan Magistrate wherein she alleged that the Investigating Officer of the case had joined hands with the culprits and advised and tried to get the offence compounded subject to payment of Rs.2,00,000/- and when the Complainant showed inability, the Investigating Officer even extended threats of dire consequences.

14. Respondent No.2 also made a Complaint to the SHO, Aman Vihar on 01.06.2016; to the Human Rights Commission on 28.09.2016 and to Women Commission, Delhi on 03.11.2016 but no action was taken against the accused persons.

15. Respondent No.2 has also submitted in her Reply that to execute the threat after hatching conspiracy on 19.1.2016, *Sunil Dabas @ Sonu* and *Sher Khan*, murdered one of the eye witness of the said FIR, namely, *Asha Rama*, who had given his statement before the Court on 11.05.2016 and an FIR No.



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1159/2016, under Section 302 IPC, was registered at Police Station Aman Vihar, Delhi but even then, the accused persons were not arrested by the police officials.

16. Respondent No.2 has submitted that her statement under Section 161 Cr.P.C. recorded at the time of investigation was just a formality, as there is plethora of evidence pointing towards the complicity, which was not collected by the Investigating Officer.

17. The Investigating Officer filed a CDR report of the mobile No.9642218491 which is in the name of Ranbir Singh and is not in the name of Petitioner and the Investigating Officer did not deliberately disclose the number which was in use by the present Petitioner at the time of commission of the offence.

18. It is submitted that the Investigating Officer is deliberately and intentionally delaying the investigation and filing false record of evidence, which supports the Petitioner. It is submitted that the impugned Summoning Order dated 09.06.2017 does not suffer from any infirmity and the present Petition is liable to be dismissed.

19. In the **Rejoinder**, the Petitioner has reaffirmed the assertions made by him in the present Petition.

20. ***Submissions heard and record perused.***

21. Essentially, the FIR in question was registered on the statement of the Chinta Devi (PW-18), wife of the deceased, wherein the Petitioner is not named. Even during investigation, his name did not feature as one of the accused. In the Charge-sheet also, name of accused *Anil @ Bahuwa @*



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Hakla was mentioned and there is no mention of Petitioner. Even the three eye witnesses to the alleged incident, have not named the Petitioner. Moreover, even the Complainant in her statement recorded under Section 161 Cr.P.C. did not name the Petitioner.

22. The Complainant in her testimony recorded before the learned Trial Court as PW-18, stated that as she was going to the crime spot, allegedly Petitioner met her on the way and told her that he has taken the revenge. This aspect was neither disclosed in the FIR nor in her statement recorded under Section 161 Cr.P.C.

23. The Complainant in her cross-examination reaffirmed that she had told the Investigating Officer about the Petitioner allegedly telling her that *he has taken the revenge*, but was confronted with her statement under Section 161 Cr.P.C. wherein no such fact was recorded.

24. Investigating Officer, Inspector Rajender Prasad (PW-23) has also in his examination in chief, explained that call detail record of accused *Anil @ Bahuwa @ Hakla* was analyzed during investigation. Since Complainant- *Chinta Devi*, had expressed her suspicion *Sunil Dabas @ Sonu*, the Call Retail Record was thoroughly analyzed and it was learned that there was no involvement of *Sonu Dabas*.

25. It is, therefore, evident that there is no cogent evidence against *Sonu Dabas*, except the statement of the Complainant- *Chinta Devi*, who in her examination-in-chief had named him as having stated that he has taken his revenge, which in itself is not sufficient to summon him on her Application under Section 319 Cr.P.C.



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26. The learned Trial Court fell in error in concluding that from the deposition of *Chinta Devi*, *prima facie* complicity of Petitioner was made out. Learned Trial Court has overlooked the testimony of Investigating Officer PW-23, who has categorically deposed that Call Detail Record of the Petitioner were analyzed and no incriminating evidence was collected against him.

27. Even if the statement of Complainant- *Chinta Devi* (PW-18) is accepted, then also it may at best be termed as motive, but that in itself cannot be the sole evidence to *prima facie* establish the complicity of the Petitioner. This statement, and that too in examination in chief, which found no support during the investigations, cannot be considered sufficient for summoning of the Petitioner. It cannot also be ignored that the main accused have already been acquitted by this Court, in Appeal. It is thus, held that there is no incriminating material sufficient for summoning of the Petitioner for the offence under Section 302 IPC.

28. With the aforesaid observations, the impugned Summoning Order dated 09.06.2017, passed by the learned Additional Session Judge in case FIR No.1412/2015, under Section 302 IPC read with Sections 25/27 Arms Act, registered at Police Station Aman Vihar, Delhi, is hereby set aside.

29. Consequential proceedings, arising therefrom against the Petitioner, are hereby quashed.

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH 24, 2025



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