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State vs.sanjay Kumar Tiwari

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Court : Delhi

Decided On : Jan-24-2019

Appellant : State

Respondent : Sanjay Kumar Tiwari

Advocate for Pet/Ap. : Mr. Kewal Singh Ahuja

Judgement :

$~19 IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

24. h January, 2019 + CRL.M.C. 2712/2016 STATE Through: Mr. Kewal Singh Ahuja, APP .....

... Petitioner
for the State with SI Nepal Singh, PS CR Park. versus SANJAY KUMAR TIWARI CORAM: HON'BLE MR. JUSTICE R.K.GAUBA Through: Respondent in person. ..... Respondent ORDER (ORAL) 1. The first information report (FIR) No.76/2007 of the subject case was registered on the compliant of Phool Singh, a delivery-man, engaged by a firm named and styled as Kalkaji Gas Service, the duties entrusted to him being to take gas cylinders from the godown of his employer in a three wheeler scooter (TSR) and deliver the same to the respective consumers, as per instructions.

2. It is alleged that, on 16.03.2007, he having carried twenty-two gas cylinders from the godown of his employer, had reached near house No.1520 in C.R. Park,

New Delhi at about 1:45 p.m., he was accosted by four persons who had come to the place in an Indica car bearing registration No.DL-8CG-7982. He alleged that the said four persons had introduced themselves as press reporters of newspaper Hindustan People and confronted him with accusation that he was Crl. M.C. No.2712/2016 Page 1 of 8 engaged in illicit business of taking out gas from the cylinders which he was deployed to deliver. They allegedly forcibly took out two gas cylinders from the vehicle and started making a video film with a camera they were carrying and while doing so extended threats that they would defame him by publishing this information in the press and, if he did not want to be so defamed, he should pay Rs.10,000/, also extending threats that if he would not comply with the said demand, he might also be done to death.

3. The complainant alleged that these persons had earlier also extended threats to him in a similar manner and had extorted money from him in the past. He stated that he had handed over Rs.2,500/- (which he was carrying at that point of time) to one of the said persons named Baijnath Dubey, to be told that this was not sufficient and that he should call for the balance Rs.7,500/-. As per the complainant, on his telephonic call, his brother Amar Singh, who was similarly engaged in the job of gas supply had come on the scene and while he was pleading with the four persons, a large number of public persons had gathered who, upon learning about the intent of the four persons, started assaulting them in which process two of them fled away, while two persons named Baijnath Dubey and Pawan Kumar were apprehended and handed over to the police.

4. The complainant also stated in the FIR that the identity of the two persons, who had fled away, had been revealed to be Sanjay Kumar Tiwari and Sahid, the person named Sanjay Kumar Tiwari being the respondent herein. Crl. M.C. No.2712/2016 Page 2 of 8 5. The FIR was registered vide No.76/2007 and investigation into offences punishable under sections 419/3
IPC was carried out. During the course of investigation, some identity cards purporting to be of a newspaper named Hindustan People were seized from the persons who had been apprehended from the spot.

6. The presence of the respondent and other person named Sahid could not be secured immediately. The investigation resulted in a report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) dated 11.05.2007 being submitted in respect of the two initial arrestees, namely, Baijnath Dubey and Pawan Kumar, the names of the respondent and Sahid being shown in column No.2.

7. Later, the presence of the respondent and Sahid were also secured and further investigation in their respect culminated in a supplementary charge sheet, dated 02.04.2009 being submitted. It may be added that in the supplementary charge sheet, it was indicated that the investigation respecting the identity cards (which had been used) was still pending and a supplementary report in that regard would be submitted in due course. The trial court record, however, would show that such supplementary report respecting the identity cards has not been submitted till date.

8. After the supplementary charge sheet had been submitted, the Metropolitan Magistrate considered the question of charge. By order dated 17.03.2015, she found prima facie charge made out for offences under Sections 392/419/468/4
IPC against Sanjay Kumar Tiwari Crl. M.C. No.2712/2016 Page 3 of 8 (the respondent) and Sahid, rejecting the plea of alibi of the respondent, also repelling his contention that he had not indulged in any impersonation on account of his claim that he was the Managing Director of M/s. Ujwala News Network and working editor of Hindustan People, a newspaper published fortnightly.

9. The respondent challenged the said order in the court of sessions by Criminal Revision Petition No.143/2015. The said petition was allowed by order dated 15.02.2016 of Additional Sessions Judge. A perusal of the said order, which is under challenge by the present petition under Section 482 Cr.P.C., would show that the prime reasons why the revisional court was not satisfied were that the respondent had represented himself to be Sandeep Kumar Tiwari, a person who, as per the report of the Registrar of Newspaper of India (RNI) was the owner and editor of the publication Hindustan People; there was no test identification parade (TIP) held to establish his presence at the scene with the three others, he having been arrested seven months after the occurrence; the complainant not having

stated in the FIR that on account of past such incidents he was familiar with the face and name of the perpetrators.

10. Feeling aggrieved, the State has come up with the present petition submitting that the discharge of the respondent by the revisional court was improper and perverse, the crucial evidence having been glossed over, the circumspection of the restricted scrutiny that was to be made at the stage of consideration of the criminal case for charge having been ignored. Crl. M.C. No.2712/2016 Page 4 of 8 11. In Sajjan Kumar vs. CBI, (2010) 9 SCC368 the Supreme Court summarized the principles which are to be kept in mind by a criminal court at the stage of consideration of a case for framing of charge under Sections 227 and 228 of Cr. PC. The court ruled thus : 21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge: (i) The Judge while considering the question of framing the charges under Section 227 Cr PC 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. The test to determine prima facie case would depend upon the facts of each case. (ii) 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. (iii) The court 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, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond Crl. M.C. No.2712/2016 Page 5 of 8 reasonable doubt that the accused has committed the offence. (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. (vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if

the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal. (emphasis supplied) 12. The respondent had entered appearance in these proceedings on 19.04.2017. He was given opportunity to file his response. In spite of the matter being pending ever since and having been adjourned from time to time, no reply or response has been submitted on his behalf. In the given facts and circumstances, there is no reason to enlarge the said opportunity further. Crl. M.C. No.2712/2016 Page 6 of 8 13. Having heard the submissions, and having gone through the trial court record, this court finds the approach of the revisional court to be wholly erroneous. The respondent had been named in the FIR from the very inception. Whether or not to hold TIP is an aspect that is for the investigating agency to consider inasmuch as such step is, after all, only in aid of investigation. The substantive evidence is to be found from the deposition of the witnesses, in this case particularly the complainant. The issue of alibi was rightly rejected by the Metropolitan Magistrate inasmuch as it is a matter of defence respecting which the respondent will have to discharge his burden at the trial. The RNI report indicating that the owner and editor of the publication Hindustan People is a person named Sandeep Kumar Tiwari rather militates against the claim of the respondent that he was working as the editor of the said fortnightly by newspaper. It will be for the respondent to show facts to the contrary at the trial.

14. This court, however, is not satisfied with the way the Metropolitan Magistrate proceeded to direct charge to be framed also for offences under Sections 419/468/471 IPC. No documents which may be forged were ever seized from the respondent. There is nothing on record to show that he had used any such fabricated document at the time of commission of the alleged offence. The case attributed to him amounts to extortion and since while extorting money from the complainant he was put in fear, such extortion amounts to the offence of robbery

as defined in Section 390 IPC and punishable under Section 392 IPC. Crl. M.C. No.2712/2016 Page 7 of 8 15. In the foregoing facts and circumstances, charge should have been framed against the respondent for offence under Section 392 read with Section 34 IPC. The discharge order granted by the revisional court being incorrect, the same is set aside. The Metropolitan Magistrate is directed to proceed further with the criminal case including against the respondent by framing charge in light of the above observations.

16. The respondent is directed to appear before the Metropolitan Magistrate on 02.02.2019, as is fixed by virtue of order dated 03.01.2019 of the trial court.

17. Needless to add, the respondent will be obliged to furnish fresh bail bonds to regulate his presence in the further proceedings in terms of the order that would have been passed earlier.

18. The petition stands disposed of in above terms.

19. Trial court record be sent back forthwith with copy of the order. JANUARY24 2019 vk R.K.GAUBA, J.

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