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Romesh Sharma vs the State

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Court : Delhi

Decided On : Jan-29-2026

Judge : Hon'Ble Ms. Justice Neena Bansal Krishna

Appeal No. : CRL.REV.P./646/2004

Appellant : Romesh Sharma

Respondent : The State

Advocate for Pet/Ap. : Mr. SP Kaushal, Mr. Dhananjai Kaushal, Mr. Saksham Kalra, Mr. Aaryan Sharma, Mr. Utkarsh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 25th August, 2025 Pronounced on: 29th January, 2026
+ CRL.REV.P. 646/2004

ROMESH SHARMA

S/o Sh. Satya Narayan R/o C-30, May Fair Garden New Delhi .....Petitioner Through: Mr. SP Kaushal, Mr. Dhananjai Kaushal, Mr. Saksham Kalra and Mr. Aaryan Sharma, Advocates

versus

THE STATE

R/o F-16/4, DLF Phase-1 Gurgaon, Haryana .....Respondents Through: Mr. Utkarsh, APP for the State with Insp. Bharat Lal PS Hauz Khas

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

1. Criminal Revision Petition under Section 397 read with Section 401

of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) has been filed on behalf of Petitioner, Romesh Sharma to challenge the Order on Charge dated 10.08.2004 of the learned ASJ in Sessions Case No. 93/2001 in FIR No. 0849/1998, P.S. Hauz Khas.

2. The learned ASJ had framed the Charges under Section 120B with

Section 302 IPC on 10.08.2004. This Order is challenged on the ground

that from the totality of the facts available and the Charge Sheet, there is no material to even prima facie make out the case against the Petitioner, to warrant a trial. It has not been considered that there is no incriminating evidence against the Petitioner in the Chargesheet, to connect him with the alleged offences.

3. The first ground of challenge is that FIR was registered on the basis

of Rukka/Complaint dated 03.11.1998 of Insp. Ishwar Singh. He, however, could not have been the Investigating Officer, who collected the evidence and filed the Chargesheet. The entire evidence conducted, is vitiated and the Petitioner is entitled to discharge.

4. Supreme Court in Megha Singh v. State of Haryana, AIR 1995 SC

2339, disapproved the procedure wherein the Investigating Officer who lodges the Complaint, himself becomes the Investigator. Division Bench in the case of State of Karnataka v. Sheshadri Shetty and Ors., 2005 Crl. LJ 377, also observed that an impartial investigation is the bedrock of any successful prosecution. In some rare and unusual cases, there may be an illegal infirmity or impediment, but the principles of ethical jurisprudence must hold good irrespective of consequences. The law proscribes an Investigating Officer and there is no compromise if this bar is transgressed and the consequences would follow automatically.

5. The second ground of challenge is on merits, to assert that no prima

facie case of conspiracy is made out from the Charge Sheet. For an offence under conspiracy, there has to be more than one person to conspire with each-other to commit the offence or have an intention to commit the crime which should materialise as a result of meeting of minds. The alleged incriminating conversation between the Petitioners and Abu Salem, who

stated that Nahin Babloo wala kaam to kara deta hoon. UP Police se karwa deta hoon, even if admitted as true, does not make out even a prima facie case of conspiracy. There is nothing suggestive that the Petitioner had ever conspired with co-accused for the murder.

6. It is further contended that the entire case of the prosecutions rests

solely on the tape recorded conversation, allegedly between the Appellant and the co-conspirator. However, this cassette containing the conversation, remained with HC Dilbagh Singh from 01.10.1998 to 03.11.1998. The alleged conversation is said to have taken place between 01.10.1998 to 20.10.1998. Whether HC Dilbagh Singh heard this conversation on a parallel line, is not made clear. When exactly this conversation took place; whether it was 01.10.1998 or was it on any other date till 20.10.1998, has also not been clarified.

7. HC Dilbagh Singh should have should have handed over the cassette

to Insp. Ishwar Singh on 01.10.1998 or on the date of recording of the conversation. However, the tape recorded cassette was handed over to Insp. Ishwar Singh only on 03.11.1998. There is no explanation as to why HC Dilbagh Singh kept the cassette with him till 03.11.1998 and why was it not sealed between 01.10.1998 to 20.10.1998. This does not rule out the possibility of tampering of misusing or erasing the magnetic tape of the cassette.

8. In the case of Chandrakant Ratilal Mehta & Ors. v. The State of

Maharashtra, 1993 Cri.LJ. 2863, it was held that for the tape recorded evidence to be admissible, must be sealed at the earliest point of time and not opened except under the orders of the Court.

9. It is further contended that the Accused cannot be compelled to give

his voice sample, as has been held in the case of Ritesh Sinha v. State of UP AIR 2013 SC 1132 and in Rakesh Bisht v. CBI 2007 Cri.L.J. 1530.

10. Further, in the case of Ram Singh v. Col. Ram Singh, AIR 1986 SC 3,

it was held that the voice of the speaker must be duly identified by the maker of the record. The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence.

11. In the case of Yusufalli Esmail Nagree v. Tha State of Maharashtra,

AIR 1968 SC 147, it was held that the time and place and the accuracy of the recording must be proved by a competent witness and the voice must be properly identified. One of the features of magnetic tape recording is the ability to erase and reuse the recording medium for which reason such evidence must be received with caution. This tape Recorded conversation, is therefore, not reliable and cannot be read against the Petitioner.

12. The third ground of challenge is that in the expert CFSL Report

dated 02.09.1999 the voice samples marked Ql(a) to Q4(a) and S(a) are stated to be probable voice of the same person. The Report does not show beyond doubt, that the tape-recorded voice is that of accused Romesh Sharma. Hence, the entire case of the prosecution crumbles.

13. Thus, the observations that the FSL Report has confirmed that the

voice belongs to Romesh Sharma, is incorrect as no such confirmed opinion has been given in the FSL Report.

14. The last ground of challenge is that except the recorded statement,

there is no independent evidence to corroborate the conspiracy allegedly entered into by the Petitioner with Abu Salem to murder Bablu Shrivastava. In the case of Sumitra Debi v. Calcutta Dying and

Bleaching, AIR 1976

Calcutta 99, it was held that Court must be cautious of accepting the evidence of tape recording and should reject it unless there is further independent and reliable corroboration.

15. It is further asserted that this conversation is not accompanied by any

overt act and nothing happened to Bablu Shrivastava, who remained lodged in Jail. There is not a shred of evidence to show that the Petitioner ever talked to any Police Officer of UP Police or took any further steps for execution of the conspiracy.

16. In Kehar Singh & Ors. v. The State (Delhi Administration), AIR 1988

SC 1883, it was observed that for an offence of conspiracy, there has to be some physical manifestation. In Damodar v. State of Rajasthan, AIR 2003 SC 4414, it was further held that the offence as to the transmission of thoughts, sharing the unlawful act is not sufficient and that a conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would he held guilty under Section 120-B of the Indian Penal Code.

17. It is therefore, submitted that the impugned Order on charge is bad in

law and is liable to be set aside.

Submissions heard and Record Perused.

18. Before embarking on the contentions raised by the Petitioner, it may

be observed that the FIR was registered in 1998 and the Charge Sheet was filed 0n 11.01.1999. While the endeavour of the police to monitor the criminal activities to keep the people of the country is appreciable and the efforts put in constant vigil, is laudable, but it cannot transgress into a

complete disregard for the criminal justice system. This case reflects that while there may be some apprehension that the accused was ostensibly in touch with with the gang members of Dawood Ibrahim and some crime may be committed, but control and keeping a check cannot be, by abuse of law and implication in a case, which in its own estimation, has no legs to stand on.

19. Another disturbing aspect is the manner in which the trial has

proceeded. Whatever may have been the reason for filing the Charge Sheet, the progress of the trial has also raised some serious question about expeditious trial, which is recognized as a fundamental Right under Article 14 and Article 21 Constitution of India. While the right to challenge an

Order on Charge is as per the provisions of Cr.P.C, but what happened

thereafter, is an issue. The trial got stayed vide Order dated 05.10.2005 when 5 prosecution witnesses out of total 19 PWs had already been recorded; the trial is in abeyance since then. Axiomatically, had there been no stay, the trial perhaps would have got concluded and reached its logical end. Though this Court cannot deny the delay in this Court, but it does raise questions pertaining to delays, more so, in criminal trials where it is the life and personal liberty which is at stake. These words only express the anguish of this Court, in its endeavour to bring a quietus

at least, to this one case.

20. The brief facts of the prosecution case, as stated in the Charge Sheet

are: Since last few weeks it was revealed through secret sources that some members of the Dawood Ibrahim gang are making their movements to Delhi and that one of their associate Romesh Sharma through his mobile phone No. 9811197600 is in regular contact with the members of

Dawood gang in Dubai and Pakistan on their phone Nos.

(1) 0097150-6845036 (2) 009714495548 and (3)

0092215875445. It was further learnt that Romesh Sharma provides shelter and financial help to these associates of underworld. In order to develop this information further and to keep surveillance over them, the staff of Anti- Kidnapping Cell, Crime Branch was deputed. In order to verify the - information the prints of call details of mobile phone nos. 9811197600 was taken from the Essar Company and this confirmed that Romesh Sharma with his Mobile Phone is in contact with the members QI Dawood gang in Dubai and Pakistan. Orders of the competent authorities were taken on 3 0/9/98 to monitor and for listening the mobile phone number 9811197600 and this phone was kept under observation. The conversation over this phone was heard and tape-recorded through a parallel line from that Ramesh Sharma s/o Late Satya R/o C-30, Mayfair Garden, New Delhi is having conversation with the Dawood men in Dubai and Pakistan in order to commit some heinous crimes. During these conversations, it was revealed that-Ramesh Sharma after contacting the Dawood Gang in Dubai, is conspiring to murder Om Prakash Shrivastava @ Babloo Shrivastava, presently lodged in Naini Jail, Allahabad for taking revenge because he got killed Mirja Dilshad

Beg in Nepal through his associate Mange and Parvez. That the Police intercepted a conversation between the Petitioner and Romesh Sharma and Abu Salem in Dubai, over phone no. 9811197600, which was heard by HC Dilbhagh Singh from 01.10.98 to 20.10.98 through a parallel line, which was tape recorded in a cassette. Allegedly, this conversation revealed that

accused Romesh Sharma was conspiring to murder Babloo Shrivastava lodged in Naini Jail, Allahabad.

21. The investigation relied primarily on electronic surveillance. Police

intercepted telephonic conversations between the petitioner and Abu Salem, allegedly having taken place between 01.10.1998, and 20.10.1998. On the basis of this tape-recorded conversation, Inspector Ishwar Singh prepared a rukka and FIR No.850 dated 03.11.98 P.S. Hauz Khas, was registered. The investigations were carried out by Inspector Ishwar Singh, who collected the cassette from HC Dilbagh Singh and sent it to FSL. The Report was obtained which stated that the voice in tape recorded cassette was probably of the Petitioner. On completion of investigations, Charge Sheet was filed in the Court.

22. After taking cognizance, the learned ASJ had framed the Charges

under Section 120B with Section 302 IPC on 10.08.2004, which is the subject matter of challenge in the present Petition. Part: I Procedural Inadequacies - Whether the Complainant can be the Investigating Officer:

23. The first challenge raised by the Petitioner is that the Complainant

cannot also be the Investigating Officer. It is a fundamental principle of criminal jurisprudence that the investigation must be fair, impartial, and free from bias. In the present case, it is a fact that Inspector Ishwar Singh is the Complainant who registered the Rukka/Complaint dated 03.11.1998. It is mentioned in the Charge-Sheet itself: Hence this case was got registered by Insp. Ishwar Singh on 3/11/98 and the investigation of the case was carried out by himself.

24. Paradoxically, Insp. Ishwar Singh who had prepared the Rukka and

got the FIR registered, proceeded to act as the Investigating Officer (IO), collected the evidence, and filed the charge-sheet.

25. In this context, it may be relevant to refer to the apt remarks of

Krishna Iyer, J. in Nandini Satpathy vs. P.L. Dani, (1978) 2 SCC 424: The first obligation of the criminal justice system is to secure justice by seeking and substantiating truth through proof. Of course, the means must be as good as the ends and the dignity of the individual and the freedom of the human person cannot be sacrificed by resort to improper means, however worthy the ends. Therefore, third degree has to be outlawed and indeed has been. We have to draw up clear lines between the whirlpool and the rock where the safety of society and the worth of the human person may co-exist in peace.

26. Therefore, the means of collecting evidence are as relevant as the end

Charge Sheet.

27. The Apex Court in Megha Singh v. State of Haryana, AIR 1995 SC

2339, has disapproved of the practice wherein the police officer who lodges the complaint/FIR, himself conducts the investigation. Such a procedure creates a reasonable apprehension of bias and strikes at the credibility of the prosecution case. The Apex Court had observed as under: We have also noted another disturbing feature in this case. PW-3, Siri Chand, head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161,

Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.

28. The Division Bench in State of Karnataka vs. Sheshadri Shetty and

Ors., 2005 Cri. LJ 377, while reiterating the stance of Megha Singh (supra)

held that an impartial investigation is the bedrock of a successful

prosecution. Where the law prescribes a bar or a procedural safeguard to ensure fairness, the transgression of such a principle renders the investigation suspect. The Court observed as under:

One of the basic legal infirmities which have been held

against the prosecution by the Trial Court emanates from the fact that PW-8/H. Manjappa who was the Sub- Inspector of Police at the relevant time had gone to the spot and being also the Investigating Officer has recorded his own complaint treated it as the FIR and has proceeded with the investigation. The legal complications that emanate from a situation of this type have been highlighted by the Supreme Court in the case of Megha Singh Vs. State of Haryana, wherein the Investigating Officer was the very person who had lodged the compliant which was treated as the FIR and the starting point of the investigation. The Supreme Court disapproved of the procedure and undoubtedly, there was very valid reason for it because the Supreme Court has indicated that where the Investigating Officer happens to be the complainant that it would be perhaps difficult to uphold the position that the investigation was impartial. An impartial investigation is the essential bed-rock for any successful prosecution. Undoubtedly, this situation was very unusual and was something that rarely ever happens in criminal cases but the Supreme Court was quick to point out that this is a legal infirmity or an impediment. This is precisely the plea that was put forward before the Trial Court. The Trial Court upheld the plea and it was one of the principal grounds on which the accused have been acquitted.

29. The Court in Sheshadri Shetty (supra) went on to hold as under:

> we need to remind the prosecuting authorities that the error that has occurred in the present case ought never to be repeated and the Director General of Police still bring it to the notice of all Investigating Officers in the state that there is a legal bar to an Investigating Officer functioning in the dual capacity of the complainant also and that this error should not be repeated because it would virtually vitiate even an otherwise reasonably good investigation.

30. In the instant case as well, IO. Inspector Ishwar Singh, prepared the

Rukka stating that on the basis of source information, the phone of the Petitioner was put under surveillance and the conversations were heard on parallel line and recorded in cassettes, on the basis of which FIR was registered. Being the person responsible for recording of conversations and also the Complainant, he himself took over the investigations as IO, undermining not only the independence and impartiality of investigations, but the investigations also got tainted with Bias, causing a serious prejudice to the accused. This in itself, is sufficient to make the evidence collected by him as unreliable, more so because the entire case hinges solely on these the conversation recorded in the cassettes.

31. This legal infirmity vitiates the investigation and renders the

material collected unreliable thereby leaving no basis for framing the charges.

32. The case of the Prossecution is examined herein below to consider

whether there is any prima facie case against the Petitioner, on merits.

PART II- Fundamental Infirmities - Whether Offence of Conspiracy is Disclosed in the Charge Sheet:

33. The first aspect for consideration is whether the offence of conspiracy

is prima facie disclosed, even if the entire prosecution case as presents in the Charge Sheet, is admitted to be correct.

A. Whether offence of Conspiracy, made out:

34. Criminal conspiracy, as defined under Section 120A is a distinct and

an independent offence, and is separately punishable offence under Section 120B IPC, from the substantive offence for which the accused has entered into conspiracy. S. 120A of IPC reads as under: 120A. Definition of criminal conspiracy - When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an

agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

35. The ingredients of criminal conspiracy, as spelled in the S.120A, are:

(i) An agreement between two or more persons; and

(ii) The agreement must relate to doing or causing to be done

either:

(a) an illegal act; or

(b) an act which is not illegal in itself but is done by illegal

means.

36. As has been pointed out by Subba Rao, J in Major E.G. Barsay Vs.

State of Bombay, AIR 1961 SC 1762: the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal

conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts.

37. As affirmed by the Apex Court in the case of State (NCT of Delhi) v.

Navjot Sandhu, (2005) 11 SCC 600 and Sudhir Shantilal Mehta v. CBI, 2009 INSC 1421, Courts must infer the existence of a conspiracy from the surrounding circumstances and the conduct of the accused. A coordinated series of acts by different individuals, can lead to a legitimate inference that they were acting in pursuance of a common plan.

38. However, by its very nature, conspiracy is hatched in secret and

executed in darkness, as observed by this Court in Shivnarayan Laxminarayan Joshi & Ors. Vs. State of Maharashtra, AIR 1980 SC 439.

39. It is extremely rare for the prosecution to have access to direct

evidence of the unlawful agreement. Recognizing this, the courts have consistently held that a conspiracy can be, and often is, proven by circumstantial evidence. Relying on the same, the Court in Yogesh (supra),

held that the meeting of minds of the conspirators can be inferred from the

circumstances proved by the prosecution, if such inference is possible.

40. Thus, the primary question for determination is whether the

material on record is sufficient to frame a charge for the offence of criminal conspiracy under Section 120B read with Section 302 IPC, against the Petitioner.

41. While a detailed appreciation of evidence is not required at the stage

of framing charges, the Court must be satisfied that there exists a strong suspicion founded on material on record, which leads the Court to form an

opinion as to the existence of the ingredients constituting the offence alleged.

42. As per the Charge Sheet, the averments are:

The conversation between the Dawood men and Ramesh Sharma is recorded in total four different cassettes. One of these cassettes was seized in this case. .. From the recorded conversation between the Dawood men and Ramesh Sharma, it is crystal clear that both of them have reached into an agreement and conspired to murder Om Prakash Shrivastava @ Babloo through UP police. .. From the recorded conversation between the Dawood men and Ramesh Sharma, it is crystal clear that both of them have reached into an agreement and conspired to murder Om Prakash Shrivastava @ Babloo through UP police. In this way the associate of Dawood Ibrahim and associate of Romesh Sharma Late Satya Narain r/0 C-30, Mayfair Gardn, Delhi had committed an offence u/s 120-B IPC with and underworld operative Abu

Salem to eliminate a rival gang leader. .. From the records it became clear that Romesh Sharma used to talk to Dawood Ibrahims associate Abu Salem in Dubai. The Inspector also examined Om Prakash Shrivastava @ Babloo s/o Late Bishwa Nath Srivastava r/o C-9/1, Nirala Nagar Lucknow (UP) who is presently lodged at Naini Jail, Allahabad as under trial prisoner who in his statement stated that Dawood and his associates Abu Salem etc. wants to get him killed. . During the course of investigation, it transpired that phone number 0097150-6845036 is of Abu Salem and that phone number 009714-495548 is of Mohd. Anees Seikh Ibrahim who is the brother of Dawood Ibrahim. The record of Videsh Sanchar Nigam Ltd has been obtained which shows that the calls received on mobile phone number which were used by Romesh Sharma (I) 9811197600 and

(2) - 981I0-99989 from U.AE. Telephone.

. From the statements of the witnesses and from the record placed on file, there is sufficient evidence to prove

that Ramesh Sharma accused column No. 3 and Abu Salem Ansari, an associate of Dawood Ibrahim had reached into an agreement and conspired to murder Om Prakash Shrivastava@ Babloo through UP Police and have committed an offence u/s 120B IPC r/w 302 IPC.

43. The core allegation is that Romesh Sharma conspired with Abu

Salem, who was based in Dubai at the time, to murder Om Prakash Srivastava @ Babloo Srivastava. At the time of the alleged conspiracy, Babloo Srivastava was lodged in Central Jail, Naini, Allahabad. The conspiracy allegedly took place through telephonic conversations, recorded between 01.10.1998, and 20.10.1998. The investigation revealed that the conspiracy was to eliminate Babloo Srivastava who

was suspected to have orchestrated the killing of Mirza-Dilshad-Beg, a member of Dawood gang, in Nepal.

44. The first foundational aspect to constitute conspiracy is that there

has to be agreement between at least two persons. The Chargesheet began with the averments that it was revealed through secret sources that some members of Dawood Ibrahim Gang are making movement to Delhi and one of their associate Romesh Sharma through his mobile number, is in regular contact with members of Dawood Gang in Dubai on their given mobile numbers. It was further averred that between 01.10.1998 to 20.10.1998 there are conversations between Dawood men and Romesh Sharma. Further, it was averred that from the recorded conversation between Dawood men and Romesh Sharma, it became crystal clear that both of them have reached an Agreement and conspired to murder Om Prakash Srivastava. In the end, it is stated that the associate of Dawood is Abu Salem.

45. While there is a snippet of the conversation which has been

reproduced in the chargesheet, pertinently there is no mention about the person with whom the said conversation took place, other than a bald assertion that the Petitioner was in constant touch with the associates of the Dawood Ibrahim gang members in Dubai. From the narration in the Chargesheet, it emerges that consistently, it was stated that the conversations were between some associates of Dawood Ibrahim and the Petitioner. At no place is it asserted that the recorded conversation was between Romesh Sharma and Abu Salem.

46. The name of Abu Salem is introduced by asserting that the CDR call

records of Romesh Sharma indicated that he was frequently calling on UAE number. It transpired during the investigations that Phone number 0097150- 6845036 was of Abu Salem. However, on what basis has it been concluded that this number belonged to Abu Salem, is left to ones imagination. Furthermore, aside from stating that the Call Detail Records of Romesh Sharma shows that he had received calls from UAE telephone numbers on his two numbers, there is nothing to show that the alleged conversations took place between the Petitioner and Abu Salem.

47. This is significant as the Charge Sheet is conspicuously silent about

the identity of the person with whom the recorded conversation took place. There is no mention also that the voice of the second person with whom the conversation of the Petitioner took place, was indeed of Abu Salem. The simplest way to show the complicity of alleged Abu Salem was also to confirm through voice testing, as was done for the Petitioner.

48. Even if the entire averments made in the Chargesheet are accepted, it

emerges that first and foremost, there is nothing to show that the person to

whom the conversation is made by Romesh Sharma, was Abu Salem. Secondly, there is no identification of the voice of the second person in the cassettes nor is there confirmation that the Petitioner was talking to Abu Salem. Thirdly, there is no evidence whatsoever to attribute these calls to Abu Salem, except a conjectural averment that the specified phone number belonged to Abu Salem and that the calls were being received by Romesh Sharma from telephone numbers which were of UAE. Unilateral communications, cannot amount to conspiracy.

49. The only conclusion that emerges is that even if the entire

Chargesheet is admitted, it is not sufficient to even prima facie establish that the second person involved in this conspiracy, was Abu Salem. The non- specification of the identity of the second person with whom the Petitioner was allegedly having conversations, is fatal to the case of the Prosecution to establish a case of conspiracy, wherein at least two persons are required to constitute a conspiracy.

50. The second aspect is that the offence of Criminal Conspiracy under

Section 120-B IPC requires an agreement i.e. meeting of mind, to do an illegal act or to achieve a common illegal objective, which was the murder of Babloo Shrivastava.

51. While a criminal thought alone is not punishable, the moment it is

shared and agreed upon by another, it transitions into a criminal conspiracy. The Apex Court observed in Yogesh @ Sachin Jagdish Joshi vs. State of Maharashtra, AIR 2008 SC 2991 that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal mean is sine-qua-non of criminal conspiracy.

52. In Mohammad Usman Mohammad Hussain Maniyar & Ors. vs. State

of Maharashtra 1981 (2) SCC 443, it was observed that for an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agree to do and/or cause to be done the illegal act, the agreement may be proved by necessary implication.

53. Next, it is pertinent to refer to the case of State vs. Nalini, 1999 (5)

SCC 253, wherein the Apex Court had observed as under: In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.

54. Further clarity can be drawn from the Commentary on Penal Law of

India, by Dr. Sri Hari Singh Gour, wherein the law has been summed up in the following words: In order to constitute a single general conspiracy there must be a common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later

stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found expedient.

55. The charge Sheet reveals that the primary evidence on which the

Prosecution case hinges, is the tape recorded conversation. Even if it is accepted that this conversation did take place, the pertinent question is whether the intercepted telephonic conversation between the Dawood men and Ramesh Sharma, establishes conspiracy. The conversation stated thus: (A) - Wo to Chodo, ek doosra kaam bhi hone wala hai maine aapko bataya nahin uska naam bataunga ROMESH - Haan

(A) - Mirza ka babloo se milkar kaam karwaya tha usney.

Mange aur Parvez ne kiya hay, usney mere se kaha hai ki usko badla lena hai ROMESH- Nahiri babloo wala kaam to kara deta boon, UP Police se karwa deta hoon

(A) - Karwa deta boon nahin, karwa do zaldi se

ROMESH - Nahin-Nahin main karwa deta hoon

(A) - Karwao agar karwana hain, bhagwan ki kasam kha

kar kehta hoon kabhi dhokha ho gaya to bahut afsos hoga ROMESH - Nahin Nahin kara hi deta hoon, Babloo ka barabar Police walon se karata hoon

56. As mentioned above, the offence of Criminal Conspiracy under

Section 120-B IPC requires an agreement to do an illegal act. Mere knowledge, discussion or even a boastful statement does not constitute conspiracy. The conversation reproduced above, even if accepted as gospel truth, reflects, at best, a casual conversation, unilateral boastful assertion by the Petitioner that he can influence the UP Police. It does not unequivocally demonstrate a concluded agreement between the Petitioner and the co- accused, to commit the murder of Bablu Shrivastava.

57. Such conversation, which is more in a casual nature and a vague

assurance to get a job done as desired by A without any concrete plan or agreement on the modus operandi, does not reflect any meeting of mind, tosustain a charge under Section 120B IPC.

58. The other facet of conspiracy is the relevant circumstances to reflect

Criminal Conspiracy is the manifestation of this alleged agreement.

59. While it is settled law that the Agreement itself constitutes the offence

of conspiracy, however, the Apex Court in Kehar Singh & Ors. v. The State (Delhi Administration), AIR 1988 SC 1883, observed that the offence of conspiracy requires some physical manifestation of the agreement. Mere transmission of thoughts or sharing of unlawful intentions is insufficient.

60. The Apex Court in Kehar Singh (supra) while considering the offence

of Criminal Conspiracy, had observed as under: Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common

intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be

undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter is. It is however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved.

61. Similarly, in Damodar vs. State of Rajasthan, AIR 2003 SC 4414, it

was held that evidence as to the transmission of thoughts sharing the unlawful act, is not sufficient without a physical manifestation of the agreement. The Court held as under: In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would he held guilty under Section 120-B of the Indian Penal Code.

62. However, this physical manifestation cannot be equated with overt

act as has been distinguished by the Apex Court in Navjot Sandhu (supra), it was observed as under: The expression physical manifestation seems to be the phraseology used in the Article referred to by the learned

Judge. However, the said expression shall not be equated to overt act which is a different concept.

63. The Apex Court further discussed the rule governing circumstantial

evidence and held that the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible.

64. It is consistently and duly recognised by the Apex Court that it is

difficult to get direct evidence of conspiracy, and accordingly, the Court in V.C. Shukla vs. State, 1980 (2) SCC 665 in regards to proving conspiracy, has held that a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

65. In this context, it would be relevant to refer to the case of Noor

Mohammad Yusuf Momin vs. State of Maharashtra, AIR 1971 SC 885, wherein the Court had observed that in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material.

66. As held in Navjot Sandhu (supra), a few bits here and a few bits

there on which the prosecution relies, cannot be held to be adequate for connecting the accused in the offence of criminal conspiracy.

67. To comprehend the element of pursuit of common design, reference

has to be made to the celebrated judgment of Regina vs. Murphy, (1837) 173 E.R. 502, wherein the Court while discussing the legal position qua proof of conspiracy held as under:

I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, Had they this common design, and did they pursue it by these common means the design being unlawful? .... If you are satisfied that there was concert between them, I am bound to say that being convinced of the conspiracy, it is not necessary that you should find both Mr. Murphy and Mr. Douglas doing each particular act, as after the fact of conspiracy is already established in your minds, whatever is either said or done by either of the defendants in pursuance of the common design, is, both in law and in common sense, to be considered as the acts of

both.

68. In the present case, the prosecution has heavily relied on the

intercepted and recorded conversation of the Petitioner, allegedly with Abu Salem. There is no surrounding circumstances, antecedents and subsequent conduct around this one-sided conversation from where there can be any inference drawn of meeting of mind to do an illegal act of murder of Babloo Shrivastava, who was lodged in jail. The only claim made by the Petitioner was that he knows the Police and would get the work done. The alleged calls fail to disclose anything about there being any further manifestation of this alleged conversation.

69. However, it the offence of Conspiracy cannot come to be unless there

are two persons whose minds have met about a common design. In the instant case, the first infirmity lies in the fact that the identity of the other accused is not established very clearly in the charge sheet. The IO has initially alleged that the Petitioner has been in constant touch with Dawood Ibrahim & his associates in UAE, and thereafter, proceeds to list out two contact numbers, one belonging to Abu Salem and the other to Anees Sheik Ibrahim, however, there is nothing on record verifying the two numbers.

70. In any case, there is not a shred of evidence to suggest that the

Petitioner took any steps pursuant to the alleged conversation. There is no evidence that he contacted any official of the UP Police, transferred any funds, or took any preparatory measures. In the absence of any physical manifestation validating the alleged agreement, the charge of conspiracy rests on surmises and conjectures.

71. Thus, the necessary act of manifestation of this alleged conspiracy

is conspicuously missing.

B: Reliability and Admissibility of Electronic Evidence:

72. Another pertinent aspect of conspiracy is that for a Conspiracy to be

formulated, parties necessarily need to meet to agree to achieve an illegal objective. In the case of Bilal Hajar @ Abdul Hameed v. State Rep. by the Inspector of Police in Criminal Appeal No. 1305/2008 it was observed that in order to constitute meeting of mind of two or more persons to do an illegal act or an act by illegal means, their presence and participation in such meeting alone is sufficient.

73. In the instant case, though it is not the case that the petitioner met the

second alleged conspirator, but this meeting allegedly took place through telephonic conversation, which got tape recorded. The authenticity of the audio cassette of the recorded conversations, assumes relevance to ascertain if there was indeed any such meeting that took place between the Petitioner and the second person. Equally important is that the conversation is recorded by following a due procedure and is handled with due precision so as to maintain its integrity, in order to be reliable.

74. The prosecution case solely rests on the Tape-Recorded conversation

between 01.10.1998 and 20.10.1998, in a cassette. A contemporaneous tape recording of a relevant conversation is a relevant fact as res gestae and is admissible under S.8 Evidence Act.

75. The relevance and evidentiary value of the tape recorded evidence

was The Apex Court in the case of Yusufalli Esmail Nagree vs. State of Maharashtra, [1967] 3 S.C.R. 720 while reiterating that if a statement is relevant, an accurate tape record of the statement is also relevant and admissible, but sounded a word of caution and noted that One of the features of magnetic tape recording is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence must be received with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with. The time and place and accuracy of the recording must be proved by a competent witness and the voices must be properly identified.

76. The test for admissibility of tape-recorded evidence, was explained by

the Apex Court in celebrated judgement of R.M. Malkani vs State Of Maharashtra, (1973 AIR 157, 1973 SCR (2) 417). It was held that tape

recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice and thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record.

77. The Apex Court again, considered the conditions of admissibility of

these Telephonic conversations in Ram Singh vs. Col Ram Singh, 1986 AIR

(SC) 3 while holding that We can see no difference in principle between

a tape-recording and a photograph. In saying this we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this Court wrong to deny to the law

of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded properly identified; provided also that the evidence is relevant and otherwise admissible, we are satisfied that a tape- recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. and further proceeded to lay down the following conditions qua the same: Thus, so far as this Court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows:

1. The voice of the speaker must be duly identified by the

maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

2. The accuracy of the tape recorded statement has to be

proved by the maker of the record by satisfactory evidence - direct or circumstantial.

3. Every possibility of tampering with or erasure of a part

of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

4. The statement must be relevant according to the rules of

Evidence Act.

5. The recorded cassette must be carefully sealed and kept

in safe or official custody.

6. The voice of the speaker should be clearly audible and

not lost or distorted by other sounds or disturbances.

78. The first aspect of recorded cassette is the integrity of the chain of

custody of the cassettes for which it must be carefully sealed and kept in safe or official custody. As per the charge Sheet, the conversations were intercepted by Insp. Ishwar Singh and were heard on parallel Line by HC Dilbagh Singh for the period between 01.10.1998 & 20.10.1998 and were recorded in the four cassettes. One cassette pertained to this case and was handed over by HC Dilbagh Singh to IO, Insp. Ishwar Singh and was signed by Inspr. Ishwar Singh and HC Dilbagh Singh, only on 03.11.1998 i.e. 13 days after the alleged period. After putting the cassette into its cover, a parcel was prepared which was sealed with the seal of I.S. and the cassette was seized and seizure memo thereof was prepared.

79. While alleging that conversation was recorded between 01.10.1998 &

20.10.1998, i.e. for 20 days, it is only a small snippet of conversation relied by the prosecution, but significantly the particular date of recording that particular conversation is conspicuously missing. A vague assertion of it being recorded on one of the days and not indicating the specific date on

which the conversation was recorded, itself indicates the unreliability and the uncertainty of this alleged conversation.

80. Secondly, there is no explanation forthcoming as to why the cassette

was retained by HC Dilbagh Singh from 21.10.1998 till 03.11.1998 and why was it not sealed immediately, upon recording of relevant conversation.

81. The non-securing and immediate sealing, assumes significance as it

creates a distinct possibility of tampering, erasing or doctoring of the magnetic tape.

82. Consequently, the integrity of securing the electronic evidence is

compromised and the possibility of it being manipulated during the period it was in the possession of HC Dilbagh Singh or IO, Insp. Ishwar Singh, cannot be over ruled and cannot be held reliable even at the stage of framing of a charge.

83. The next aspect for the admissibility of such a statement, is to identify

the voice of the speaker. In the case of Ram Singh, (supra) and Nilesh

Dinkar Paradkar vs. State of Maharashtra, 2011(3) JCC 1972, it was held

that the voice of the speaker must be duly identified, and the accuracy of the recording proved by satisfactory evidence.

84. Interestingly, while the Prosecution claimed that the communication

was between Abu Salem and the Petitioner, there is no voice identification of Abu Salem. Pertinently, as already noted above, the Charge Sheet is vague in asserting that the conversations were with the

associates of Dawood gang. Later, it is vaguely asserted that the phone number was of UAE and was of Abu Salem, without producing any cogent evidence. In the given circumstances, with no evidence whatsoever, to prove the second person, it needs to be necessarily held that the evidence of the Prosecution

detailed in the charge Sheet, fails to produce any evidence that the second voice was of Abu Salem.

85. The connected significant aspect is the voice identification of the

Petitioner. His voice sample was taken and sent to FSL which gave the opinion that the voice samples marked Q-l(a) to Q-4(a) and S(a) are probable voice of the same person.

86. The Petitioner has however, contended that compelling him to give a

voice sample violates Article 20(3) of the Constitution of India, relying on Ritesh Sinha v. State of UP, (2013) 2 SCC 357 (the reference order) and Rakesh Bisht v. CBI.

87. However, this issue has been finally put to rest by the Three-Judge

Bench of the Apex Court in Ritesh Sinha v. State of Uttar Pradesh & Anr.

(2019) 8 SCC 1, (commonly referred to as Ritesh Sinha II). The Apex Court

held that a Judicial Magistrate has the power to order a person to give a

sample of his voice for the purpose of investigation. It was further held that such a direction does not violate the fundamental right against self-

incrimination under Article 20(3) of the Constitution. A voice sample is considered physical evidence i.e. an identification data rather than testimonial compulsion which is protected under Article 20(3). The relevant paragraphs of Ritesh Sinha (2019 supra) are extracted as under: 24. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy under Article 20(3) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others (2016) 7 SCC 353, Gobind vs. State of

Madhya Pradesh and another (1975) 2 SCC 148 and the Nine Judges Bench of this Court in K.S. Puttaswamy and another vs. Union of India and others (2017) 10 SCC 1 the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further observation on an issue not specifically raised before us.

25. In the light of the above discussions, we unhesitatingly

take the view that until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime.

88. Consequently, the Trial Court committed no illegality in relying

upon the voice sampling procedure or the necessity thereof.

89. Even if one were to consider the forensic evidence i.e. the CFSL

Report dated 02.09.1999, it still does not advance the Prosecutions case, since it only establishes the identity of one person, which is not sufficient to establish conspiracy. Moreover, opinion evidence of FSL only has persuasive value and cannot be the lone basis to hold that a prima facie case of conspiracy is made out against the Petitioner.

90. In the case at hand, apart from the disputed tape recording, which

itself suffers from a faulty chain of custody, there is no independent evidence, ocular or documentary, to corroborate the allegation that the Petitioner conspired to commit murder.

91. It is a settled principle of law that tape-recorded evidence is weak

evidence and must be corroborated by independent material. In Sumitra

Debi v. Calcutta Dying and Bleaching, AIR 1976 Calcutta 99, it was held

that the Court must be cautious of accepting tape-recorded evidence and

should reject it unless there is independent and reliable corroboration. The Apex Court held as under: In my view, before any court can rely on a tape record, the court must carefully guard himself against all these possible tampering and manufacturing and should look for independent corroboration and intrinsic evidence before he relies on the tape. The court should be cautious to accept the testimony of tape-recording and should reject unless there is further independent and reliable corroboration.

92. In the instant case, apart from the disputed tape recording, there is no

independent evidence, documentary or oral, to establish the alleged conspiracy or to corroborate the identity of the speakers. The Prosecutions case stands on the singular, uncorroborated, and legally infirm leg of the audio cassette, which cannot be the sole basis to establish even a prima facie case of conspiracy against the Petitioner.

Conclusion:

93. In view of the aforesaid discussion, the impugned Order on charge

dated 10.08.2004 is set aside.

94. The Revision Petition is allowed, and the Petitioner/Romesh Sharma,

is hereby discharged in the Charge-Sheet filed in FIR No. 849/1998.

95. Pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)

JUDGE

JANUARY 29, 2026/N

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