

Rakesh Kumar Vs. State

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Court : Delhi

Decided On : Sep-13-1999

Reported in : 1999VIAD(Delhi)129; 83(2000)DLT30; 2000(52)DRJ51

Judge : M.S.A. Siddiqui, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 207; [Evidence Act, 1872](#) - Sections 10 and 27

Appeal No. : Criminal Revision Petition No. 313 OF 1999 and CRL. M. 8399/99

Appellant : Rakesh Kumar

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Advocate

Advocate for Pet/Ap. : Rajesh Manchanda and; Mr. Sanjay Kataria, Advocate

Judgement :

1. After hearing learned counsel for the parties, I purpose to dispose of this revision at the stage of admission itself.
2. This revision is directed against the order dated 20.5.1999 passed by the Addl. Sessions Judge in Sessions Case No. 26/97 directing framing of the charge under Section 392/120-B IPC against the petitioner.

3. Briefly stated, facts giving rise to this revision are that on 19.11.1993, the co-accused Narender Kumar and Vinesh Kumar committed robbery and in the course of the commission of such robbery, they used deadly weapons and looted ornaments and cash belonging to the complainant. Investigation pursuant to the FIR lodged by the complainant culminated into submission of a charge-sheet under Sections 392/397/120-B IPC against the petitioner and the other co-accused persons. On consideration of the documents referred to in Section 207 Cr.P.C. and after hearing the parties, the learned Addl. Sessions Judge also framed the impugned charge under Sections 392/120-B IPC against the petitioner vide order dated 20.5.1999. Feeling aggrieved, the petitioner has come up in revision before this court.

4. Assailing validity of the impugned order, learned counsel for the petitioner contended that the material collected by the investigating agency does not constitute any offence against the petitioner and the learned Addl. Sessions Judge has committed a manifest illegality in framing the charge under Sections 392/120-B IPC against the petitioner. In my opinion, the aforesaid submission of the learned counsel merits acceptance. The impugned order reveals that the Addl. Sessions Judge has framed the impugned charge on the ground that co-accused Narender Kumar and Vinesh Kumar, in their disclosure statements under Section 27 of the Evidence Act, have implicated the petitioner and further the petitioner has not objection against framing of the impugned charge.

5. It is well settled that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. (Union of India Vs . Prafulla Kumar Samal and another, : 1979 CriLJ154 ; State of Jammu and Kashmir Vs . Romesh Chander and others, : 1997 CriLJ2976). A charge cannot be framed merely on the ground that the accused has no objection against framing of a charge.

6. As noticed earlier, the learned Addl. Sessions Judge has framed the impugned charge on the basis of the disclosure statements made by the coaccused Narender Kumar and Vinesh Kumar under Section 27 of the Evidence Act. It is

well settled that under Section 27 of the Evidence Act only so much of the information as distinctly relates to the facts really thereby discovered is admissible. (Earabhadrapa v. State of Karnataka, ; Mohd. Abdul Hafeez Vs . State of Andhra Pradesh, : 1983 CriLJ689 ; State of Uttar Pradesh Vs . Deoman Updhyaya, : 1960 CriLJ1504 ; Mohd. Inayatullah Vs . The State of Maharashtra : 1976 CriLJ481 ; Prabhoo Vs . State of Uttar Pradesh, : [1963]2SCR881 ; Himachal Pradesh Administration Vs . Om Parkash, : 1972 CriLJ606). Consequently, statement made by an accused under Section 27 of the Evidence Act which does not relate to the aforesaid fact but involves other accused is admissible against the latter.

7. Learned Addl. Sessions Judge has observed in the impugned order that a statement recorded under Section 27 of the Evidence Act is relevant under Section 10 of the Evidence Act. In my opinion, the learned Addl. Sessions Judge has misconstrued Section 10 of the Evidence Act. It is well settled that Section 10 of the Evidence Act will come into play only when the Court is satisfied that there is a reasonable ground to believe that two or more persons have conspired together to commit an offence of an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his coconspirators. Once such a reasonable ground exists, anything said, done or written by one of conspirators in reference to their common intention, after the said intentions were entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. (Bhagwan Swarup v. State of Maharashtra AIR 1965 SC 682). In the instant case, there is not an iota of evidence to show or suggest that the petitioner and the remaining accused persons conspired together to commit the alleged offence of robbery. That apart, in State of Tamil Nadu Vs . Nalini and others : 1999 CriLJ3124 , it was held that Section 10 of the Evidence Act, which is an exception to the general rule, while permitting the statement made by one. conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person become snapped out of the conspiracy, any statement made subsequent thereto cannot be used as against the other conspira- tors under Section 10 of the Evidence Act. (Sardul Singh Caveeshar Vs . The State of Bombay, : 1957 CriLJ1325 ; State of Gujarat Vs .

Mohammed Atik and others, : 1998 CriLJ2251 . Normally, a conspirator's connection with the conspiracy would get snapped after he is nabbed by the police and kept in their custody because he would thereby cease to be the agent of the other conspirators. Thus, the disclosure statements made by the co-accused Narender Kumar and Vinesh Kumar under Section 27 of the Evidence Act. cannot be pressed into service to fasten any criminal liability on the petitioner. Consequently, I have no hesitation in coming to the conclusion that the Addl. Sessions Judge has committed a manifest illegality in framing the impugned charge under Sections 392-120-B IPC against the petitioner on the basis of the disclosure statements made by the co-accused Narender Kumar and Vinesh Kumar under Section 27 of the Evidence Act and the same has resulted in flagrant miscarriage of justice.

8. For the foregoing reasons, the revision is allowed and the impugned charge framed against the petitioner is quashed. The petitioner is discharged and his bail bonds are cancelled.

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