

State vs. Mahesh Chand Tomar & Anr.

CNR No.: DLCT01-002644-2022

SC No. 49/2022

FIR No. 809/2021

Under Section 186/353/307/482/34 IPC & 25/27 Arms Act

PS Wazirabad

06.06.2022

Present : Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Shikul Jha, Advocate for both the accused persons,
namely, Mahesh Chand Tomar and Sukhbir Singh.
Both accused persons are produced from JC.

ORDER ON CHARGE

1. Ld. Defence counsel contended that firing of gun-shot by the accused, namely, Sukhbir Singh at the police team, was an immediate reaction and there was no pre-meditation between the accused persons for causing any lethal injury to the police team. He contended that principles enshrined under Section 34 IPC cannot be made applicable to the accused, namely, Mahesh Chand Tomar. He contended that the accused, namely, Mahesh Chand Tomar did not have any knowledge that the accused, namely, Sukhbir Singh would fire at the police team. He contended that charges under Section 186/353 IPC are also not made out as there is no evidence that the accused persons obstructed police officials in discharge of their official duties. He contended that charge under Section 482 IPC is also not made out against the accused, namely, Sukhbir Singh as he was a pillion rider of the motor-cycle driven by the accused, namely, Mahesh Chand Tomar. He prayed for discharge of the accused persons.

2. On examination of charge-sheet, statement of the witnesses and recovery memos, there is sufficient ground for proceeding against the accused persons, namely, Mahesh Chand Tomar and Sukhbir Singh under Sections 307/34 IPC.
3. The accused persons, namely, Mahesh Chand Tomar and Sukhbir Singh voluntarily obstructed the police team, in their official uniform, which had signaled them to stop and thereafter, the accused, namely, Sukhbir Singh fired at the police team. Therefore, charge under Section 353/34 IPC is also framed against the accused persons.
4. The accused, namely, Mahesh Chand Tomar was driving a stolen motor-cycle with a fake number plate and therefore, he should be charged under Section 482 IPC.
5. The accused, namely, Sukhbir Singh allegedly fired gunshot at the police team and he, therefore, charged under Section 27 Arms Act.
6. In the absence of complaint under Section 195 Cr.P.C., charge under Section 186 IPC cannot be framed.
7. Likewise, charge under Section 25 Arms Act cannot be framed against the accused persons, namely, Mahesh Chand Tomar and Sukhbir Singh in the absence of sanction under Section 39 Arms Act.
8. Requisite charges are framed against the accused persons, namely, Mahesh Chand Tomar and Sukhbir Singh to which they have pleaded not guilty and claimed trial.
9. PW SI Vikas Deep alongwith IO be summoned for **18.07.2022.**

Sanjay Sharma-II
ASJ-03, Central District,
Tis Hazari Courts, Delhi