

SC 360/2019
STATE Vs. SALMAN & Anr.
FIR No.223 /2019
PS KARAWALNAGAR

03.09.2022

ORDER ON CHARGE

1. Brief facts of the case are that FIR has been registered on the complaint of complainant Sh. Satish Jain. On completion of investigation, the charge sheet against the accused has been filed U/sec. 392/397/411/34 of IPC.

2. When the matter was fixed for hearing arguments on the charge, I have heard the Ld. Counsels for the parties.

3. The Ld. Counsel for the accused has submitted that since the pistol alleged to have been used in the commission of offence has not been recovered, so no offence is made out U/sec. 397 of IPC and at the most offences punishable U/sec. 392 & 411 of IPC are made out and prayed for discharge of the accused U/sec. 397 of IPC.

4. On the other hand, Ld. Substituted Addl. PP for State has submitted that the charge sheet against the accused has been filed U/sec. 392/397/411/34 of IPC and since both the accused in furtherance of their common intention had robbed away the following articles:-

- (a) one ring of gold weighing around 15 grams.
- (b) one ring of silver weighing around 10 grams,
- (c) one chain of gold weighing around 22 grams,
- (d) one mobile phone Maker VIVO V-5 of golden colour

- (e) one mobile phone maker VIVI Y-81 of grey colour
- (f) Rs.25,000/- in cash,
- (g) Some other documents including Aadhar Card, PAN Card, Driving license, Parshad Card, ATM cards of SBI bank and Syndicate Bank.

and submits that the supplementary statement of the complainant Sh. Satish Jain was also recorded on 24.06.2019 and after seeing the photographs of Salman, he had disclosed before the IO that he is the Salman who had used pistol in the commission of the crime and submits that from the supplementary statement of the complainant recorded on 26.04.2019, it is clear that prima facie offence punishable U/sec. 397 of IPC is made out against the accused Salman and submits since both the accused in furtherance of their common intention had robbed away the aforesaid articles from the complainant and also submits that since the alleged mobile phone of the complainant was recovered from the accused Salman and robbed gold chain of the complainant was recovered from the accused Imran, so, prima facie offence punishable U/sec. 411 of IPC is made out against both the accused and submitted that at the time of framing of charge only prima facie case is required to be seen and prayed for framing of charges in the present case against both the accused U/sec. 392/34/411 of IPC and charge against the accused Salman U/sec. 397 of IPC is liable to be framed for showing the pistol to the complainant.

5. I have given thoughtful consideration to the submissions made by the Ld. Counsels for the parties and have perused the

record.

6. The perusal of the record reveals that on 15.06.2019, both the accused alleged to have robbed away the following articles:-

- (a) one ring of gold weighing around 15 grams.
- (b) one ring of silver weighing around 10 grams,
- (c) one chain of gold weighing around 22 grams,
- (d) one mobile phone Maker VIVO V-5 of golden colour
- (e) one mobile phone maker VIVI Y-81 of grey colour
- (f) Rs.25,000/- in cash,
- (g) Some other documents including Aadhar Card, PAN Card, Driving license, Parshad Card, ATM cards of SBI bank and Syndicate Bank.

7. The supplementary statement of the complainant Satish Jain recorded on 24.06.2019 reveals that on seeing the photographs of the accused Salman, he had identified that this accused Salman and alleged that Salman had shown the pistol to the complainant, so, from said supplementary statement of complainant Satish Jain recorded on 24.06.2019, prima facie case punishable U/sec. 397 of IPC is made out against the accused Salman. I do not find any force in the submissions of the Id. Counsel for the accused that in view of non recovery of pistol, the accused can be discharged U/sec. 397 of IPC. Since, both the accused in furtherance of their common intention are alleged to have robbed away the following articles:-

- (a) one ring of gold weighing around 15 grams.
- (b) one ring of silver weighing around 10 grams,
- (c) one chain of gold weighing around 22 grams,
- (d) one mobile phone Maker VIVO V-5 of golden colour
- (e) one mobile phone maker VIVI Y-81 of grey colour

(f)Rs.25,000/- in cash,

(g) Some other documents including Aadhar Card, PAN Card, Driving license, Parshad Card, ATM cards of SBI bank and Syndicate Bank.

8. so, prima facie case punishable U/sec. 392/34 of IPC is made out against both the accused. Since the mobile phone of the complainant is alleged to have been recovered from the accused Salman and robbed gold chain of the complainant is alleged to have been recovered from the accused Imran, so, prima facie offence punishable U/sec. 411 of IPC is made out against both the accused. So, the charges U/sec. 392/34/411 of IPC are liable to be framed against both the accused and charge U/sec. 397 is liable to be framed against accused Salman for allegedly using pistol in commission of robbery.

**ANNOUNCED IN THE OPEN
COURT ON 03.09.2022**

**(PAWAN KUMAR MATTO)
(Special Judge NDPS)
North East/Delhi**