

SC No. 417/2018
State Vs. Rahish Ahmad & Ors.
FIR No. 375/2018
PS: Gokul Puri

19.2.2024

Present: Sh. F. M. Ansari, Ld. Addl. PP for the State.
All the three accused produced in JC.
Sh. R. K. Kochar, Ld. Counsel for the accused
Arvind @ Binda.
Sh. Farukh Ahmad, Ld. Counsel for the accused
Abid.
Sh. Sunil Tiwari, Ld. Counsel for the accused
Rahish Ahamd through V.C.
IO/Insp. Jagdish Yadav.

The matter is fixed for evidence of the prosecution.

Notice issued to the witness Nazim is received back with report, served, whereas, notice issued to witness Sadiq through the IO is received back with report, unserved.

IO/Insp. Jagdish Yadav has mentioned in the report on the summon of witness Sadiq that one HC Shripal was sent to serve the summon at the permanent address of Daushpur Thok, Tehsil Jalalabad, PS Jariyanpur, District Shahjahanpur, U.P. and on reaching at the given address of witness Sadiq, HC Shripal met with one Saddik S/o Sabbir, village Daushpur, PS Mirzapur, District Shahjahanpur, U.P. (cousin of witness Sadiq), who stated that family of witness Sadiq had left the village about 14 years before and father of witness Sadiq expired about 8 years ago. He does not know the present whereabouts of family members of

witness Sadiq. Thus, the summon could not be served to witness Sadiq. Statement of Saddik, cousin of witness Sadiq, Smt. Ramkali, village Pradhan and Rajbir Singh are also enclosed with this report.

The notice issued to this witness Sadiq s/o Saleem on another address i.e. H. No. C-32, Sajwan Nagar, Mithapur, behind Masjid, Ghaziabad, U.P. is also received back with the report, unserved. It is mentioned by Insp. Jagdish Yadav, in his report that on receipt of summon of witness Sadiq, he reached at the given present address H. No. C-32, Sajwan Nagar, Mithapur, behind Masjid, Ghaziabad, U.P., where, he enquired from local residents and his sister Tabassum, but, found no clue. His mother has already sold her house. They do not know his present whereabouts. The IO has also filed the list of six local residents with this report.

IO has also told to this court that he had enquired about all the address of this witness Sadiq, as, earlier this witness resided in the tented accommodation at Chand Bagh, Delhi, but, he had already vacated the said house and thereafter, notices to this witness Sadiq were also issued on the address of Ghaziabad given by him. Notice to this witness Sadiq could not be served even on his address at Ghaziabad and also at his permanent address of District Shahjahanpur, U.P. and even the sister of this witness Sadiq, Tabassum did not tell the present whereabouts of this witness Sadiq.

The perusal of the record reveals that the Hon'ble High Court of Delhi in Bail Application No. 3939/2023 was pleased to direct the IO to produce the witness Sadiq on dated 12.2.2024 in this court and also directed to this court to examine this witness, but, despite of directions of the Hon'ble High Court of Delhi, IO failed to produce the witness Sadiq in the court on 12.2.2024 for his examination.

Since on dated 12.2.2024, IO did not appear and notice issued to witness Sadiq was received back with report, unserved. So, the matter was adjourned for 13.2.2024.

On dated 13.2.2024, the Ahlmad posted in this court had told to this court that 4-5 days prior to 12.02.2024, this IO had come in the court and he had given the copy of the order of the Hon'ble High Court of Delhi passed on dated 23.1.2024 in the Bail Application no. 3939/2023, whereby, the Hon'ble High Court of Delhi was pleased to direct this IO to ensure the presence of the witness Sadiq in this court on dated 12.2.2024. but, despite of it, IO did not make any effort.

Earlier, notice issued to the IO for 12.2.2024 was received back with the report that this IO was on leave since 03.2.2024 to 12.2.2024.

On dated 13.2.2024, IO had appeared and submitted that on 29.1.2024, his father had expired, so, he was on leave for such period. The IO had also submitted that some more time may

be given to serve the notice to witness Sadiq and submitted that the present matter may be fixed for 19.2.2024 i.e. today, for examination of witness in this court.

Since, the abovesaid bail matter in the Hon'ble High Court of Delhi is fixed for 21.2.2024. So, at the request of the IO, the present matter was ordered to be listed for today, for evidence of the prosecution. Fresh notices were ordered to be issued to the witness Sadiq on all the addresses mentioned in the file including his permanent address of his native village. Same were ordered to be handed over to the IO on the same day i.e. 13.2.2024.

Accordingly, summons to witness Sadiq were issued. Same were ordered to be executed through the IO for today. But, IO failed to serve the summon to witness Sadiq and also failed to produce this witness in the court, so, this court is not able to examine this witness Sadiq. Sh. R. K. Kochan, Ld. Counsel for the accused Arvind @ Binda and Sh. Farukh Ahmad, Ld. Counsel for the accused Abid have submitted that opportunity of the prosecution to examine this witness Sadiq S/o Saleem may be closed.

Ld. Addl. PP for the State has submitted that this witness Sadiq is a material witness, so, the opportunity of the prosecution to examine this witness cannot be closed, as, this witness was also using a mobile phone. This court is also of the considered opinion that witness Sadiq S/o Saleem is a material

witness, so, in the given circumstances, the opportunity of the prosecution to examine this witness Sadiq cannot be closed.

In view of the reports filed by the IO/Insp. Jagdish Yadav, **the notice to witness Sadiq is ordered to be served through the Commissioner of Police, Delhi for the next date of hearing.**

Notice issued to another witness Nazim is received back with report, served and witness Nazim is present today.

Let witness Nazim be examined.

Accordingly, examination-in-chief of witness Nazim (PW-11) has been recorded. During examination-in of PW-11, Ld. Addl. PP for the State has submitted that this witness has resiled from his previous statement recorded by the IO, so, he may be allowed to cross-examine this witness. After hearing, the Ld. Addl. PP for the State is allowed to cross-examine this witness. During cross-examination by the Ld. Addl. PP for the State, an envelope sealed with the seal of RAA is opened, but, this court finds that statement u/s. 164 of CrPC of this witness is not therein and it is regarding the TIP proceedings, so, the Ahlmad is called upon. The Ahlmad has submitted that he will go to the court concern to bring the original statement of this witness recorded u/s. 164 of CrPC. He has gone to the said court and told that the Ahlmad of the concerned court is not able to trace the original statement of this witness, recorded by the Ld.

MM U/s 164 of Cr.PC and sought time to trace out the said statement. At the request of the Ld. Addl. PP for the State, further cross-examination of PW-11 by the Ld. Addl. PP for the State is deferred. PW-11 is bound down for the next date of hearing.

Accordingly, the matter stands adjourned for remaining evidence of the prosecution.

To come upon **12.3.2024**. PW-11 and another witness Adil be summoned for the next date of hearing. IO and MHC(M) are also ordered to be summoned. **Witness Sadiq be also summoned for the next date of hearing. Same is ordered to be served through the Commissioner of Police, Delhi.**

(PAWAN KUMAR MATTO)
Addl. Sessions Judge (Special Judge NDPS)
North East/KKD Courts/Delhi/19.2.2024