

SC No.186/2017
FIR No.11/2017
PS:Ambedkar Nagar
State vs. Prakash etc.

30.05.2019

Present: Sh. Nishchal, Ld. Substitute Addl.PP for state
Sh. Rahul Malik, Ld. Counsel for accused Prakash,
Shiv Kumar @ Bobby, Arun Kumar and Shokeen
Sh. Anil Tomar, Ld. Counsel for accused Sahil Gupta
Sh. JC Kaushik, Ld. Counsel for accused Subhash
Sh. Jagat Singh, Ld. Counsel for accused Chander
Bhushan @ Inder Bhushan
All accused produced from JC.

Arguments in this case were heard on the last date of hearing in the presence of IO who had informed that sanction of section 39 is yet to come though he has already applied for the same after he received the FSL report regarding the alleged weapon of offence. It appears that in the last ordersheet the presence of IO is not inadvertantly mentioned. Considering the fact that case is long pending for awaiting sanction of Sec. 39 Arms Act, I am inclined to frame charge in the matter so that the material witnesses of the prosecution case may be expeditiously examined without any further delay in the matter. **Charge u/s 25 Arms Act shall be considered separately as and when the supplementary chargesheet is filed with sanction of Sec. 39 Arms Act.**

I have carefully perused the charge sheet and other material available on record including the statements of witnesses u/s 161 Cr.P.C. In view of the fact that four of the accused are in judicial custody for quite long time, I am inclined to frame charge in the case. Both side heard on the charge.

Counsel for accused Prakash, Shiv Kumar, Arun and Sahil are conceding to the proposed charge against said accused persons.

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However, the counsels appearing for accused Shokeen, Subhash, Chanderbuhshan @ Inderbhushan have vehemently opposed charge against said accused. It is argued by the counsels for said accused that besides disclosure statement of accused Prakash and Shivkumar, there is absolutely no other material to connect said accused persons with the offence of conspiracy. It is further stated that as per the prosecution story, the co accused Subhash and Chanderbhushan @Inderbhushan had procured the pistol allegedly used in the offence by co accused Prakash while the pistol for another co accused Shivkumar was arranged by co accused Shokeen. Counsel says that besides the disclosure statement of Prakash and Shiv kumar in this regard, IO has failed to collect any material to connect accused Shokeen, Subhash and Chanderbhushan @ Inderbhushan with the alleged weapons or to the commission of offence and there is no iota of material to show that these accused persons had any connection with the weapon allegedly recovered from the possession of accused Shiv Kumar and Prakash. No investigation has been done by the IO to know about the source of said weapons.

IO Inspector Ajab Singh, who was present in the court had submitted that accused Prakash is the brother in law (sala) of accused Subhash and at the request of Prakash, Subhash had got a pistol arranged for him from his (Subhash's) friend namely Chanderbhushan @ Inderbhushan. IO further submitted that Shokeen was known to accused Shiv Kumar as he had met him in the jail when he was also in judicial custody in some case and at the request of Shiv Kumar, Shokeen procured a pistol and five rounds for Shiv Kumar.

Counsel for accused Subhash says that name of Subhash was deliberately named by co-accused Prakash in his disclosure

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statement because Subhash had married with Prakash's sister against the wishes of Prakash's family and Prakash had also lodged an FIR of section 307 IPC against accused Subhash, though in said FIR, accused Subhash stands acquitted by the court. But, just to take revenge from Subhash, Prakash deliberately named him in his disclosure statement.

Even Ld. Addl.PP concedes to the fact that except the disclosure statement of accused Prakash and Shiv Kumar regarding the weapons of offence being procured to them by the above three accused persons namely Subhash, Chanderbhushan @ Inderbhushan and Shokeen, there is no other material in the chargesheet against these persons. Ld. Addl.PP however, submits that it is rare to find any direct or independent evidence for the offence of conspiracy but, the overall facts and circumstances of the case are sufficient to prima facie show that there was meeting of mind between all the accused persons to hatch a conspiracy to kill the family members of Shahrukh, who was lodged in Tihar Jail alongwith accused Sahil Gupta and after a quarrel in Tihar Jail wherein Sahil Gupta had been caused injuries with the surgical blade by Shahrukh, Sahil became revengeful against Shahruk and threatened him that he would get his (Shahruk's) family members killed with the help of his associates and pursuant to that he hatched a conspiracy with Prakash and Shiv Kumar, who had visited him in jail one day prior to the alleged incident.

Before dealing with the respective contentions in the light of the material on record, I may note here that the essence of criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Conspiracy itself is a substantive offence and is distinct from the offence to commit which

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the conspiracy is entered into. The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means and the performance of an act in terms thereof. In pursuance to the conspiracy, if the conspirators commit several offences, then all of them will be liable for the offence even if some of them had not actively participated in the commission of the offences. **Reliance placed on Sate of H.P. vs. Krishan Lal Pradhan AIR 1987 SC 773.**

Although, for an offence punishable u/s 120B IPC prosecution need not to necessarily prove that perpetrators expressly agree to do or cause to be done illegal act and the agreement may be proved by necessary implication but in any case, the offence of criminal conspiracy has its foundation in an agreement to commit an offence. The agreement to do an illegal act can be proved by direct evidence or by circumstantial evidence and the provisions do not require that each and every person who is a party to conspiracy must do some overt act towards the fulfillment of object of conspiracy.

Hence, the offence of conspiracy is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. But in the instant case, except the disclosure statement of co-accused, there is no whisper made by any witness about the conspiracy part of the case qua accused Subhash, Prakash and Chander Bhushan. Admittedly none of these three accused were either present at the time of shooting nor they were ever lodged in Tihar Jail with co-accused Sahil who is allegedly the mastermind of whole conspiracy and against whom also charge of Sec.302/307 IPC is sought to have

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been framed with the aid of Sec.120B IPC only as there is no allegation that they (Sahil, Shokeen, Subhash and Chander Bhushan) were physically present at the time of incident of shoot out.

Although, accused Sunil has also been chargesheeted for the offence of Section 120B IPC read with section 302 IPC but against him, IO has placed sufficient evidence in the form of material relating to alleged fight of Sunil with complainant's brother Shahrukh in Tihar Jail, further the record of jail showing the visit of accused Prakash and Shiv Kumar in Tihar Jail just a day before the date of alleged incident, to meet accused Sahil. But, with regard to other three accused namely Shokeen, Subhash, Chander Bhushan, except disclosure statement of accused Shiv Kumar and Prakash, there is no iota of material to show any element of conspiracy or abetment against them. IO was not able to trace the source of said weapons except recording the disclosure statement of accused Prakash and Shiv Kumar, to show that they were procured from aforementioned three accused. Though it is rare to find any direct evidence for the offence of conspiracy but, in the instant case there is no iota of even circumstantial evidence to show any element of meeting of mind between said three accused and the other co-conspirators.

In this case IO has chargesheeted seven accused persons, out of whom two accused namely Prakash and Shiv Kumar have been chargesheeted for the offence of Section 302/307/120B IPC and 25/27 Arms Act. Whereas, the remaining five accused have been chargesheeted for the offence of 302/307/120B IPC.

Having regard to the aforementioned facts and circumstances, accused Shokeen, Subhash, Chander Bhushan are discharged for the offence u/sec. 120B IPC as well as u/sec.302/307

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IPC rw Sec.120B IPC. The material against rest of the accused namely Prakash, Shiv Kumar, Arun and Sahil is however, sufficient to make out a prima facie case for all the charges proposed against them i.e. charges for the offences of Sec.302/307/120B IPC and Sec.27 Arms Act. Let case be put up for formal framing of charge against said accused. Accused Shokeen. Subhash and Chander Bhushan are directed to furnish bail bond in terms of Sec.437A Cr.PC within four days.

Put up for formal framing of charge on **04.06.2019**.

(Sunena Sharma)
Additional Sessions Judge-03 (South)
Saket Courts/New Delhi/30.05.2019