

18.10.2022

Present: Sh. Yogendra Adari, Ld. Addl. PP for the State.

All four accused with Id counsel Sh. L. S. Gautam

IO / SI Arun Kumar in person.

Arguments on charge heard.

Ld counsel for the accused persons submitted that present FIR has been registered on the complaint of HC Rang Rao in which he has stated that a red colour tempo Tata 407 in which 3-4 boys of around age 20 to 25 years were sitting, was standing at around 2:40 a.m. in night. They parked their motorcycle in front of the tempo and when they went to inquire from them, then they drove away tempo from there after hitting their motorcycle. This does not show that any attempt was made by the accused persons to kill the complainant and other police officers, therefore, no offence u/s. 307 IPC is made out. Further, there is no eye-witness to the alleged theft of two tyres of some truck and also no recovery has been made from the accused persons, so, no offence u/s. 379 IPC is made out.

He further submitted that if we go by the complaint then at maximum from the allegations made in the complaint offence u/s. 186/353/34 IPC and 427 IPC are made out.

Ld counsel further submitted that accused persons were not arrested at the spot and they were arrested later on in some other case and on their disclosure they were arrested in this case and there is no investigation qua their identification. Therefore,

there is no material regarding their identity and only evidence against them is their disclosure statement and therefore, they are entitled to be discharge from the present case.

On the other hand, Id APP submitted that along-with complainant HC Rang Rao, Ct. Bajrang was on patrolling duty and he in his statement u/s. 161 Cr.PC has specifically stated that accused persons have exhorted to kill them and driver of Tata 407 hit their motorcycle intentionally and they saved themselves by jumping on one side and while driving away accused persons threw stones on them. This clearly shows the intention of the accused persons to kill them and therefore, offence u/s. 307 IPC is made out.

He further submitted that eye-witness Karmod Alam has stated in his statement u/s. 161 Cr.PC that the tempo which hit the motorcycle of policeman, stole two tyres of truck no. HR-55G-2349. So there is eye-witness to the theft of two tyres committed by the accused persons and it is not necessary for the commission of offence u/s. 379 IPC that stolen property should have been recovered.

He further submitted that motorcycle is of police department and is therefore a public property and for causing damage to public property there is specific offence u/s. 3 of Prevention of Damage to Public Property Act and charge should also be framed under this section.

Case file along-with documents perused.

It is stated that law on point as to when an accused can be discharged or can be charged in situation where contradictory evidence is on record has been best laid down in

case titled as “**Union of India Vs. Prafulla Kumar Samal and Anr**”. After examining all pros and cons following guidelines have been laid down in para no. 10 of the aforesaid judgment:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

i) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

ii). Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

iv). That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

Hon'ble Supreme Court of India in case titled as “**Satish Mehra Vs. Delhi Administration and Ors 1996 J. C. C 507**” has expressed similar view that when judge is fairly certain that there is no prospect of case ending in conviction the valuable

time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on future date.

In the present case, the eye-witness HC Bajrang has specifically stated that they have saved themselves by jumping one side when accused persons ran over their motorcycle with their tempo. In case HC Bajrang and HC Rang Rao did not jump then tempo could have hit them and there are chances that it might cause their death. So, accused persons have done everything which was under their control but HC Bajrang and HC Rang Rao were saved due to their act of jumping away.

Further, HC Rang Rao in his supplementary statement dated 17.07.2012 have identified the accused Aarif and Shahzad in the police station when they were arrested in FIR No. 117/12 PS Kapashera. Further, accused Hafiz is arrested in the present case after being declared PO and he was identified by ASI Rang Rao in the court and same is recorded in his statement u/s. 161 Cr.PC dated 17.01.2020. So, all the three accused persons Hafiz, Aarif and Shahzad have been identified by the complainant of the present case.

So, prima facie it is shown in the charge-sheet that Hafiz, Aarif and Shahzad were driving the red colour tempo Tata 407. Karmod Alam has seen the occupants of red colour Tata 407 stealing two tyres of Truck No. HR-55G-2349, so, prima facie it is shown that these accused persons have committed theft of two tyres.

As motorcycle belongs to the police department and is therefore is a public property and accused persons have caused damage to it, therefore, offence u/s. 3 of Prevention to Damage to Public Property Act is made out and no offence u/s. 427 IPC is made out.

Therefore, regarding accused persons Shahzad, Aarif and Hafiz, there is sufficient material on the record which raises grave suspicion regarding their involvement in the alleged incident, therefore, charges u/s. 496/353/379/34 IPC and Sec.3 of PDPP Act is framed against them.

Separate charge against accused Hafiz u/s. 174A IPC is framed.

As regarding the accused Javed, the only evidence against him is the disclosure statement of the co-accused and same cannot be relied upon and there is no material regarding identification of the accused Javed on record, therefore, there is no sufficient material on record to frame charge against him and accordingly he is discharged from the present case.

Issue summons to witnesses mentioned at Sr. No.1, 2, 3, 4, IO and MHC(M) with case property for next date of hearing.

Put up on **30.01.2023 and 31.01.2023** for PE.

(Vipin Kharb)
ASJ-04(SW)/Dwarka Courts
18.10.2022