

Koolchand Shah.

v

State of Madhya Pradesh

O R D E R

By-filing the present petition under section 397 read with section 401, Criminal Procedure Code, the charge framed against the present petitioner is sought to be quashed on the ground that material collected by the prosecuting agency, even if it remains unrebutted, is not sufficient to hold the accused guilty of the charge framed against him.

2. The accused-petitioner has been charged for having committed on or about September 28, 1991, an offence punishable under section 302 read with section 120B, Indian Penal Code, for having conspired to commit murder of Shri Shankar Guha Niyogi (Shri Niyogi in short) as a result of which conspiracy Shri Niyogi was murdered in the night intervening 27th - 28th September 1991 by the two co-accused.

3. It has been submitted for the petitioner that, even if, the entire material collected in the case diary is accepted as it is and remains unrebutted, the petitioner cannot be held guilty for committing the said offence by any stretch of imagination. Therefore, no charge could have been framed against the petitioner. Consequently, the present petitioner should be discharged and the order of framing the charge against him should be quashed under sections 395 and 397 of the Code



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of Criminal Procedure.

4. In reply, it has been submitted that there are five circumstances appearing against the present accused-petitioner relating to which admissible evidence has been collected and the said circumstances clearly connect the accused with the crime. In any case, there is a triable case against the accused-petitioner and it would not be justified for the High Court to stifle the prosecution at its threshold and discharge the accused-petitioner without being tried. It is also in the interest of justice that the accused faces the trial so that an impression is not created in the mind of the general public that a wealthy and mighty person got off free without trial even when there was a triable case against him.

5. The circumstances narrated against the present accused-petitioner are —

- (i) that the present accused-petitioner had a motive to commit the said crime;
- (ii) in his dying declaration Shri Niyogi mentioned that the petitioner was collecting anti-social element to get the said crime committed;
- (iii) that the present petitioner told Umashankar that Niyogi would be seen in the near future and then he (Umashankar) would be left alone (Niyogiji Ko Jaldi Hi Dekh Liya, Jayega Phir Tum Akele Ho Jayenge). Looking to the event which followed, it was clearly the intention to the effect that Shankar Guha Niyogi would be done to death;
- (iv) that there are statements of two witnesses viz. Satya Prakash Nishad and Anand Nishad, who have categorically stated before the police

that main accused Falten Mallik confessed before them that it was present petitioner who had engaged accused Falten Mallik for committing murder of Niyogi and had paid amount to him; and

A slip was found in the possession of the petitioner, on which names of two persons were written - the Personal Secretary of the present petitioner and those persons were assaulted by the antisocial elements.

6. The said testimony collected in the case diary has been criticised in great detail and it has been submitted that firstly, the said material is not admissible in evidence and secondly, even if, it is accepted as correct on its face value, it would not be sufficient to hold the accused guilty, even if the said testimony remains un rebutted.

7. In my opinion, at this stage of the trial the trial Court is not supposed to sift the available evidence very minutely. The charge against the present accused is that of conspiracy to commit murder. Evidence of conspiracy has to be gathered from the previous and subsequent conduct of the person concerned. Further, sufficiency of material has to be determined by the trial court itself.

8. In my opinion, it would be too broad a statement to say, at this stage, that the material collected against the accused petitioner is not sufficient even to frame the charge against him or there is no triable case against him.

9. Nevertheless, looking to the the circumstances of the case, it is desirable that the

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trial pending against accused petitioner should be concluded as early as it may be possible. It is hoped and expected that not only the prosecution but the accused shall also co-operate in seeing to it that the trial against the accused-petitioner culminates to its logical end as early as it may be possible. For this purpose, it is being directed that the trial pending against the accused petitioner be concluded as early it may be possible and preferably within a reasonable period of six months. For achieving this end, a copy of this order be sent to the Magistrate who shall make such arrangement as to the convenience of the Magistrate and the concerned Court to decide the date of trial as early as it may be possible. Attendance of the prosecution witnesses should be recorded continuously from day to-day in a session and as far as may be practicable adjournment should not be granted at evidence stage.

10. With these observations, the present petition is rejected.

11. A copy of this order be sent to the Court in which the said trial is pending and another copy be sent to the Magistrate.

Sd/- R.P. AWASTHI

JUDGE

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