

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Cr. Rev No. 6/2010
Cr.M.P. No.4/2010

Date of Decision: **30.05.2011**

CORAM:

HON'BLE MR. JUSTICE J. P. SINGH, JUDGE.

Appearing counsel:

For Petitioner(s) : Mr. B.B.Kotwal, Advocate.

For Respondent(s) : Mr. B.R.Chandan, Dy.AG.

- i) Whether approved for reporting in Press/Journal/Media : Yes/No

ii) Whether to be reported in Digest : Yes/No

Finding a case to have been made out for trial, learned Additional Sessions Judge, Jammu framed charges under Sections 302, 452 and 109 RPC, besides Section 3/25 of the Arms Act, against Anchal Kumar, Anil Kumar, Swaran Lal, Sunil Kumar, Tilak Raj and Vicky Kumar.

The petitioner-Vicky Kumar has filed this Petition urging that there being no evidence worth the name against him, learned Additional Sessions Judge's order framing charge against him with the aid of Section 109 RPC was illegal, warranting its setting aside.

His learned counsel Mr. B.B.Kotwal submitted that as the prosecution evidence does not attribute any overt act to the petitioner at the time of the commission of the offence, so no charge could be framed against him merely on the ground that, according to the prosecution evidence, he was found outside the house where the occurrence had taken place and had fled away along with other persons who had participated in the actual occurrence.

On the other hand, the learned State counsel, submitted that even if no overt act was attributed to the petitioner at the time of the commission of the offence, yet his participation in the three scuffles along with other accused, with the deceased, his brothers and their mother, within a period of one and a half hour, coupled with his presence on spot, where it was exhorted by one of the accused that if there was anyone else he should also come out and further his act of running away from the place of occurrence along with other accused, was sufficient evidence for framing charge against him with the aid of Section 109 RPC.

I have considered the submissions of learned counsel for the parties and gone through the statements of the witnesses recorded under Section 161 and Section 164-A of the Code of Civil Procedure, besides other material on records.

The petitioner's participation in the scuffles, which had led to the final act when Koushal Kumar was shot at with Swaran Lal's gun, his presence on the scene of occurrence when Swaran Lal exhorted that if anyone else was there he should also come out, coupled with his running away along with other accused from the place of occurrence, when viewed, considering the short time within which three scuffles in which the petitioner too had participated, had taken place, leading ultimately to the commission of the offence, do indicate very strong suspicion of petitioner's abetting and becoming part of the conspiracy to commit the offence of Murder.

The evidence collected by the prosecution during the investigation of the case, is not such on the basis whereof it be said that there was no sufficient ground

for proceeding against the petitioner justifying his discharge.

The petitioner's learned counsel's submission that in the absence of any overt act attributed to the petitioner at the time of commission of the actual offence, the petitioner was not liable to be tried, is found untenable, in that, even engagement of a person with one or more other person or persons in the conspiracy to commit offence would amount to his abetting the offence. That apart, the facts indicating intentional aid of an accused to others in the doing of the offence too would amount to his abetting the commission of offence.

For all what has been said above, I do not find any merit in the petitioner's Revision Petition justifying petitioner's discharge in the case.

This Revision Petition is, therefore, dismissed.

The trial Courts record be sent back forthwith for expeditious trial of the accused.

**(J. P. Singh)
Judge**

JAMMU
30.05.2011
Vinod.

