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CENTRAL BUREAU OF INVESTIGATION

v.

AKHILESH SINGH

DECEMBER 8, 2004

B

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

*Penal Code, 1860; Section 120B r/w Ss. 302 and 109/Code of Criminal Procedure, 1973; Section 482 :*

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*Murder—Conspiracy—Acquittal of main accused—Quashing of proceeding against co-accused/accomplice by High Court belatedly—Correctness of—Held : Co-accused/respondent implicated only on the basis of alleged conspiracy—Conspiracy not proved—The matter attained finality only after dismissal of the against the discharge of the main accused by the Supreme Court—Application under 482 Cr.P.C. filed thereafter along with an application for condonation of delay—Under these circumstances, High Court rightly exercised its power in condoning the delay and also quashing the proceedings against the respondent/co-accused—Evidence Act, 1872—Section 10.*

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**Respondent was one of the accused in a murder case registered against him and other accused persons Section 120B r/w Section 302 and Section 109 IPC. The respondent allegedly entered into a conspiracy with main accused and other accused persons to cause the murder of one Syed Modi, a badminton player. It was alleged that the wife of the deceased had developed intimacy with the main accused, a politician,**

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**which was objected by her husband, the deceased. There were frequent quarrels between the deceased and his wife. The main accused came to know about these developments. He decided to eliminate the deceased and in furtherance of his object he allegedly took assistance of the respondent and other three co-accused and hatched a conspiracy, and on the fateful day the deceased was shot dead by the three co-accused persons. Respondent and other three co-accused were arrested and charge-sheeted. Though wife of the deceased and the main accused were also implicated as accused but both of them were discharged by the**

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**Court of Sessions. Appeal against the discharge was dismissed by the**

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High Court and Special Leave Petition was dismissed by this Court. At that stage respondent filed an application under Section 482 Cr.P.C. along with an application for condonation of delay, which was allowed by the High Court. Hence the present appeal. A

It was contended by the appellant that the High Court was not right in exercising its jurisdiction under Section 482 Cr.P.C. after lapse of considerable period of time. B

Dismissing the appeal, the Court

HELD : 1.1. The original accused and wife of the deceased were implicated as accused, but both of them were discharged by an order passed by the Session Judge and that order of discharge was challenged by the State before the High Court unsuccessfully. A Special Leave Petition also was also filed before this Court and that too ended in dismissal. Therefore the very basis of the alleged conspiracy by the respondent with the main accused lost its substratum. [784-C] C D

1.2. The respondent was not present at the place of the incident. He was implicated in the case on the basis of the alleged conspiracy between himself and the original accused. There is no other material placed before this Court to prove the complicity of the respondent. There was no direct evidence to show that he had supplied the weapons and rendered assistance to the assailants in carrying out the common object of killing the deceased. Had the conspiracy charge been established, at least some of the acts and conduct of the respondent could have been made admissible under the provisions of Section 10 of the Evidence Act. Once the main accused, who is alleged to have hatched the conspiracy and who had the motive to kill the deceased was discharged, and when that matter had attained finality, the High Court was fully justified in holding that no purpose would be served in further proceeding with the case against the respondent. [784-D, E, F] E F G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 727 of 1997.

From the Judgment and Order dated 19.8.96 of the Allahabad High H

A Court in Crl.Misc. Case No. 37 of 1995.

Rajiv Dutta, A.D.N. Rao, Mrs. Aruna Mathur, A. Mariarputham and P. Parmeshwaran for the Appellant.

B Ram Jethmalani, Ashok Bhan, Sathin Pillania and Ms. Sandhya Goswami for the Respondent.

The Judgment of the Court was delivered by

C **K.G. BALAKRISHNAN, J. :** This is an appeal preferred by the Central Bureau of Investigation against the order passed by the High Court of Allahabad at Lucknow. By the impugned order passed by the High Court, the respondent was discharged from the criminal case filed against him.

D The facts in short are as follows. Respondent Akhilesh Singh was one of the accused in a criminal case registered under Section 120-B read with Section 302 and Section 109 of the Indian Penal Code. Charges were framed against him and he filed a petition under Section 482 of the Criminal Procedure Code before the High Court. The learned Single Judge quashed the charges framed against the respondent. The allegation against the respondent was that he entered into a conspiracy with another accused Dr. E Sanjay Singh and in furtherance of the common object of the conspiracy joined hands with other accused to cause the murder of one Syed Modi on 28th July, 1988.

F Deceased Syed Modi was a badminton player of international fame. He was a national champion of badminton for eight years and during the relevant time he was working as a Welfare Superintendent of North Eastern Railways at Lucknow. Amita Kulkarni was the wife of the deceased Syed Modi. She was also a badminton player and both of them represented India in the international meet held at Beijing in 1978. During that time, there G arose intimacy between the two players and later they decided to marry. But this was not liked by the parents of Syed Modi. Amita Kulkarni was a native of Bombay and her father was a senior business executive in a textile mill and her mother was a teacher by profession. Amita Kulkarni joined service as a clerk in Indian Railways, but she later came to Lucknow to take up H assignment as an officer in the managerial cadre in the Marketing Division

of the Cooperative Dairy Federation. The original accused, Dr. Sanjay Singh was at the helm of affairs of this Cooperative Dairy Federation. Dr. Sanjay Singh was active in politics and it is alleged that he enjoyed great political and social influence as he was a lineal descendent of the princely family of Amethi. He also held the post of a Cabinet Minister in the State of Uttar Pradesh for some period. It was further alleged by the prosecution that Amita Kulkarni came in close contact with Dr. Sanjay Singh and this was not liked by deceased Syed Modi. However, the differences are stated to have been sorted out and it is alleged that the marriage between Syed Modi and Amita Kulkarni was solemnized in 1988 at the residence of Dr. Sanjay Singh. It is alleged that even after the marriage, Amita Kulkarni continued to have her meetings with Dr. Sanjay Singh and deceased Syed Modi used to raise objections and there were frequent quarrels between Syed Modi and his wife. It is alleged that Dr. Sanjay Singh was informed of these developments and he wanted to do away with Syed Modi. He took the assistance of the respondent, Akhilesh Singh, who had criminal antecedents and was involved in several criminal cases, including murder. The respondent was alleged to have association with other accused, namely, Amar Bahadur Singh, Balai Singh, Jitendra Singh @ Tinku. After this incident, Amar Bahadur Singh and Balai Singh died and their names were removed from the array of parties. The above three accused were said to be the constant companion of the respondent Akhilesh Singh and they acted as his body guards. On 20.7.1988, the respondent introduced one Bhagwati Singh @ Pappu to Dr. Sanjay Singh and the respondent obtained a Maruti van bearing registration number HYG 1959 from one Abdul Khaliq in exchange of his own Gypsy jeep. The prosecution case is that the respondent handed over this van to the other accused and they conspired to kill Syed Modi on 24.7.1988. The respondent along with the co-accused stayed at room no. 13 of Royal hotel at Lucknow in order to carry out their mission to liquidate Syed Modi. The respondent left for Delhi by Gomti mail in the morning of 27.7.1988. On 28.7.1988 at about 7.45 P.M., Syed Modi was shot dead by Amar Bahadur Singh, Bhagwati Singh @ Pappur and Balai Singh outside the north gate of the K.D. Singh Babu stadium at Lucknow when the deceased was coming back after his badminton practice. All the three killers escaped from the place of incident in the Maruti van NO. HYG 1959 driven by Jitendra Singh @ Tinku.

The respondent was arrested on 16.8.1988 and the investigation

A revealed that the respondent was at Haridwar on 28.7.1988 and he had been trying to contact his accomplices at Lucknow to find out the developments.

The police recovered some bullets from the place of occurrence and also from the dead body of deceased Syed Modi. The police also recovered a point 38 bore revolver pursuant to the confession made by Amar Bahadur Singh. A point 9 mm pistol was recovered at the instance of accused Bhagwati Singh @ Pappu. On the basis of the material available with the investigating agency, they filed a charge-sheet against the respondent. It is interesting to note that the original accused Dr. Sanjay Singh and Mrs. Amita Kulkarni were implicated as accused, but both of them were discharged by an order passed by the Sessions Judge and that order of discharge was challenged by the State before the High Court unsuccessfully. A Special Leave Petition also was filed before this Court and that too ended in dismissal on 27.1.1994. Therefore, the very basis of the alleged conspiracy by the respondent with Dr. Sanjay Singh lost its substratum. Admittedly, the respondent was not present at Lucknow when the incident happened. Respondent was implicated in the case on the basis of the alleged conspiracy between himself and the original accused Dr. Sanjay Singh. There is no other material placed before the court to prove the complicity of the respondent. Mr. Ram Jethmalani, learned Senior Advocate appearing on behalf of the respondent drew our attention to the various reasons given by the learned Single Judge for passing the impugned order. There was no direct evidence to show that the respondent had supplied the weapons and rendered assistance to the assailants in carrying out the common object of killing Syed Modi. Had the conspiracy charge been established, at least some of the acts and conduct of the respondent could have been made admissible under the provisions of Section 10 of the Evidence Act. Once the main accused, who is alleged to have hatched the conspiracy and who had the motive to kill the deceased was discharged, and when that matter had attained finality, the learned Single Judge was fully justified in holding that no purpose would be served in further proceeding with the case against the respondent.

Another contention urged by the appellant was that the High Court exercised the jurisdiction under Section 482 of the Criminal Procedure Code after a long lapse of time. It is true that the respondent challenged the framing of charges against him after a considerable delay, but it seems that

the order of discharge passed in favour of the main accused attained finality only in 1994 when this Court dismissed the Special Leave Petition. It was thereafter only that the respondent approached the court with an application under Section 482 of the Criminal Procedure Code and the learned Single Judge in those circumstances condoned the delay. We do not think that the power exercised by the High Court suffered from any illegality or perversity. Going by the facts and circumstances of the case, we do not think that this is a fit case where this Court can interfere. The appeal is dismissed accordingly.

S.K.S.

Appeal dismissed.