

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M.C. 269/2007**

Reserved on : 5th September, 2008

% **Date of Decision : September 12, 2008**

SHRI RAJINDERPAL SINGH Petitioner
Through: Mr. Ajay Burman, Advocate.
versus

THE STATE
(THROUGH CBI) Respondent
Through: Mr. Harish Gulati with Mr. Anindya
Malhotra, Advocate

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the digest? | Yes |

J U D G M E N T

MANMOHAN, J :

1. The present petition has been filed under Section 482 Cr. P.C. for setting aside the order dated 13th October, 2006 passed by Ms. Reena Singh Nag, Additional District & Sessions Judge, Delhi, whereby the revision petition filed by the Respondent-CBI has been allowed and the order of the Metropolitan Magistrate dated 17th November, 2004 has been set aside.

2. Briefly stated, the fact of this case are that on 24th February, 1998 CBI registered a case bearing RC No. 4(S)98/SIU.I.

3. On 2nd June, 1999, on completion of investigation, CBI filed a charge-sheet against three Accused including the Petitioner under Section 120B read with Sections 419, 420, 465, 467, 468, 471, 474, 380 and 380 read with Section 411 of IPC and Section 12(1)(a)&(b) read with Section 3 of the Passports Act, 1967.

4. After hearing the matter on various dates, the learned trial court on 1st June, 2001 framed charges against the Petitioner under Section 120B, 419 and 420 IPC read with Sections 120B, 468 IPC read with Section 120B, 471 IPC read with Section 120B, 511 IPC. By this order no charges were framed against the Petitioner under Section 120B read with Section 465, 467, 474 and 380 read with Section 411 of IPC and Section 12(1)(a) and (b) read with Section 3 of Passports Act. However, no reasons for not framing certain charges were given. The order dated 1st June, 2001 is reproduced hereinbelow:-

“Present : PP for CBI

Both accused on Bail with counsel. Arguments on the point of sentence heard. Prima facie case is made out against both the accused for offence under Section 120B IPC, 419, 420 r/w section 120B IPC, 468 r/w section 120B IPC, 471 r/w section 120B IPC, 511 r/w section 419, 420 r/w section 120B IPC and accordingly charge framed to which accused pleaded not guilty. To come for PE for 8.8.2001, 9.8.2001 and 10.8.2001

Sd/-
MM/1.6.2001”

5. On 6th August, 2001 the Petitioner filed a Revision Petition bearing CR (R) No. 29/2001 in the Court of Additional Sessions Judge against the order dated 1st June, 2001 framing charges against the Petitioner-Accused.

6. Before receiving any notice of Petitioner's revision petition, on 8th August, 2001, which was the next date of hearing before the trial court, CBI filed two applications. While the first application was filed to place on record some documents, the second application was filed under Section 216 Cr. P.C. contending that the trial court had inadvertently not framed charges against the Petitioner under Section 120B read with Sections 465, 467, 474, 380 and 411 of IPC and Sections 12(1)(a) and (b) read with Section 3 of Passports Act.

7. While the application under Section 216 Cr. P.C. was pending before the trial court, the Additional Sessions Judge, after hearing the CBI, dismissed the Petitioner's Revision Petition vide judgment and order dated 7th January, 2003. The Additional Sessions Judge in its judgment and order dated 7th January, 2003 concluded that the trial court had rightly found a prima facie case against the Petitioner-Accused for the offences for which he had been charged.

8. On 17th November, 2004 the trial court dismissed the CBI's application filed under Section 216 Cr. P.C. holding that if CBI felt

aggrieved by the charges framed by the trial court on 1st June, 2001, then CBI ought to have challenged the same before the Appellate court rather than move an application under Section 216 Cr. P.C. The trial court further held that in view of the Additional Sessions Judge's order, in Petitioner's revision petition having already upheld the order framing charges, the CBI could not seek amendment of charges under Section 216 Cr. P.C.

9. On 12th January, 2005 the CBI filed a revision petition being Criminal Revision Petition No. 302/2005 against the Metropolitan Magistrate's order dated 17th November, 2004.

10. The second revisional court vide the impugned order dated 13th October, 2006 set aside the trial court's order dated 17th November, 2004 on the ground that in the earlier revisional proceedings filed by the Petitioner, the scope of Section 216 Cr. P.C. was not an issue raised or decided. The Additional Sessions Judge further held that the CBI was within its right to ask for amendment of charges, more so, when the order framing charges was not a speaking one. While setting aside the order dated 17th November, 2004 the Additional Sessions Judge directed the trial court to pass a reasoned order on CBI's application under Section 216 Cr. P.C. without referring to the earlier revisional order dated 7th January, 2003.

11. Mr. Ajay Burman, learned Counsel for Petitioner has contended that for the Sections for which the Petitioner has been discharged vide order

dated 1st June, 2001, no application under Section 216 Cr. P.C. was maintainable as the order framing charges had attained finality. He further contended that CBI having failed to have brought to the notice of the first Revisional Court that it had filed an application under Section 216 Cr. P.C., the order framing charges dated 1st June, 2001 had attained finality. He further submitted that in case CBI was aggrieved by the order framing charges dated 1st June, 2001 the only recourse open to it was to file a revision against the said order - which it had failed to do so till date.

12. Mr. Burman further submitted that by virtue of the first revisional order dated 7th January, 2003 the Petitioner's discharge qua some Sections of the Indian Penal Code stood confirmed and, therefore, it was not open to another Additional Sessions Judge to sit in appeal over the first Additional Sessions Judge's order dated 7th January, 2003. He further pointed out that by the impugned order dated 13th October, 2006, the Additional Sessions Judge had revised the initial order framing charges. In this connection, he relied upon a judgment of Division Bench of this Court in ***Ripen Kumar Vs. Department of Customs reported in 2000 (3) C.C. Cases HC 353*** wherein it has been held :-

"6. Perusal of the record show that the orders passed by Mrs.Sunita Gupta, the then learned ACMM and of Shri N.K.Gupta, Additional Sessions Judge had not been challenged in the second revision petition filed by the respondent which was listed before Shri G.P.Thareja, Additional Sessions Judge. therefore, in our view, Mr.Thareja could not have dealt with the order of his predecessor Shri N.K.Gupta, Additional Sessions Judge as well as of the then learned ACMM. Mr.G.P.Thareja was not sitting in appeal over the order of his predecessor Additional Sessions Judge, a Judge of concurrent jurisdiction. He could not have pronounced that the order passed by Shri N.K. Gupta, Additional Sessions Judge was bad in law. By doing so he exceeded his jurisdiction. He assumed

the power which never vested in him. It is settled law that an Additional Sessions Judge of concurrent jurisdiction cannot sit over the judgment of another Additional Sessions Judge. It amounts to legal impropriety. Admittedly respondent had not challenged the order of Mr. N.K.Gupta, Additional Sessions Judge in its second revision filed before Mr.G.P.Thareja, but even for the sake of argument if it had been challenged then in that case second revision could not have been maintainable. It would have been barred by law as held by Allahabad High Court in the case of Muslim Bhoora Vs. State of U.P. & anr., 1996 Cr.L.J. 98. Thus by the impugned order the learned ASJ abused the process of his Court by assuming the powers which did not exist because firstly the order of Shri N.K.Gupta, Additional Sessions Judge was not under challenge before him and secondly he was not sitting in appeal over the said order. Such an action on the part of successor court is nothing but a legal impropriety. It could not have been said that the revision decided by Shri N.K.Gupta on merits after hearing the parties was not maintainable.”

13. Mr. Burman has also raised a preliminary objection to the maintainability of the revision petition filed by CBI on the ground that no Revision Petition was maintainable against an interlocutory order. In this connection he relied upon Section 397, sub-clause 2 of Cr. P.C. which is reproduced hereinbelow:-

“397. Calling for records to exercise powers of revision.-
(1) *The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court.....*

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.....”

14. In reply, Mr. Harish Gulati, learned Counsel for CBI submitted that Section 216 Cr. P.C. permitted alteration or addition to any charge at any stage. Mr. Gulati referred to Section 216 Cr. P.C. in extenso. The relevant portion of the said Section is reproduced hereinbelow:-

“216. Court may alter charge.-(1) *Any Court may alter or add to any charge at any time before judgment is pronounced.*

(2) Every such alteration or addition shall be read and explained to the accused.

(3) if the alteration or addition to a charge is such that proceeding immediately with the trial is not likely in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.....”

15. According to him, the order framing charges never attains finality and the power to alter the charges under Section 216 Cr. P.C. can be exercised even at the appellate stage. Mr. Gulati reiterated that there is no finality attached to an order framing charges. In this connection, Mr. Gulati referred to and relied upon the judgment of the Apex Court in **Sohan Lal & Ors. Vs. State of Rajasthan reported in (1990) 4 SCC 580** wherein it was held:-

“12. Add to any charge means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under this section addition to and alteration of a charge or charges implies one or more existing charge or charges. When the appellants Vijya Bai and Jiya Bai were discharged of all the charges and no charge existed against them, naturally an application under Section 216 Cr.P.C. was not maintainable in their case. In cases of appellants Sohan Lal, Padam Chand and Vishnu against whom the charge under Section 427 IPC was already in existence there of course could arise the question of addition to or alteration of the charge. The learned Magistrate therefore while disposing of the application under Section 216 CrPC only had no jurisdiction to frame charges against the appellants Vijya Bai and Jiya Bai. In his order the learned Magistrate did not say that he was proceeding suo motu against Vijya Bai and Jiya Bai though he said that

Section 319 CrPC was also clear in this connection.”

16. Mr. Gulati also referred to ***Naresh Giri Vs. State of M.P. reported in (2008) 1 SCC 791*** and ***Hasanbhai Valibhai Qureshi Vs. State of Gujarat & Ors. reported in (2004) 5 SCC 347*** wherein it was held :-

“9. In Kantilal Chandulal Mehta vs. State of Maharashtra it was held that the Code gives ample power to the courts to alter or amend a charge whether by the trial court or by the appellate court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about the charge or in not giving him a full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred against him. Section 217 deals with recall, if necessary of witnesses when the charge is altered.

10. Therefore, if during trial the trial court on a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so, and there can be no legal bar to appropriately act as the exigencies of the case warrant or necessitate.....”

17. According to Mr. Gulati, an interlocutory order, used in a restricted sense, denotes an order of purely interim or temporary nature. According to him, it is not always converse of the term final order. Mr. Gulati submitted that orders which affect the rights of the parties are not interlocutory but final orders. He further submitted that an interlocutory order is an order which is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes against it. In this connection, Mr. Gulati referred to and relied upon ***State of Gujarat vs. Ashu Lal Nanji Bisnori*** reported in ***(2002) 4 Crimes 47 (54) (Gujarat)*** .

18. In rejoinder, Mr. Ajay Burman submitted that the Metropolitan Magistrate while disposing of CBI's application under Section 216 Cr.P.C. had nowhere stated that there was an inadvertent mistake on the part of the trial court while framing the charges. Consequently, he submitted that Section 216 Cr.P.C. power could not have been exercised by either the trial or revisional court.

19. Mr. Burman also submitted that Section 216 Cr. P.C. can only be exercised with regard to charges that have been framed and not for revival of charges which had not been framed against the Petitioner.

20. Mr. Burman submitted that the case law referred to by Mr. Gulati was not relevant to the present case as in none of the cited cases the order framing charges had been upheld by an Additional Sessions Judge in a revision petition filed by the Petitioner-Accused.

21. Having heard the parties and having perused the file, I am of the opinion that the initial order dated 1st June, 2001, by virtue of which the charges have been framed, is a non-reasoned and non-speaking order. The said order records that arguments on the point of sentence have been heard. Though Mr. Burman states that this is a typographical mistake, but it proves that the said order comprises of inadvertant mistakes. Section 216 Cr. P.C. gives power to the Court to alter or amend the charges at any stage, whether by the trial court or by the appellate court, provided the accused is not prejudiced. In my view, since the initial order framing

charges is non-reasoned and it admittedly comprises of inadvertent mistakes, CBI was entitled to file an application before the trial court under Section 216 Cr. P.C.

22. In accordance with the judgment of the Apex Court in **Sohan Lal's** case referred to hereinabove, an application under Section 216 Cr. P.C. is not maintainable against an accused who has been discharged of all the charges against him, but is available against an accused who has been charged with some offences and against whom certain charges have either not been framed or wrongly framed. Consequently, the order framing charges does not attain finality against an accused who has been charged with at least some offence.

23. From the facts mentioned hereinabove, it would be apparent that the CBI had filed its application under Section 216 Cr. P.C. at the earliest stage and that too when it had received no notice of a revision petition filed by the Petitioner. In my view, since a remedy under Section 216 Cr. P.C. was available to CBI, the CBI cannot be faulted for not having filed a revision petition against the order dated 1st June, 2001.

24. I am also of the opinion that the first Revisional Court had neither an occasion nor it dealt with either the Respondent's Section 216 Cr. P.C. application or with the Sections with which the Petitioner had not been charged. A perusal of the first revisional order dated 7th January, 2003 clearly shows that the said court only applied its mind to the offences for

which the Petitioner had been charged.

25. Consequently, the Petitioner's plea that by virtue of the impugned order dated 13th October, 2006 the Second Additional Sessions Judge had sat in appeal over the first Additional Sessions Judge's order dated 7th January, 2003 is misconceived on facts and untenable in law.

26. Mr. Burman's preliminary objection that the Revision Petition filed by the CBI was not maintainable, is also not tenable in law as the order of the Magistrate dated 17th November, 2004 was not an interlocutory order and it has to be read in conjunction with the order framing charges.

27. Moreover, in my opinion, no prejudice has been caused to the Petitioner by the impugned order as evidence in the present case is yet to be recorded and the Petitioner would have full opportunity of meeting the charges and putting forward any defence open to him on the charges preferred against him. Therefore, the present Writ Petition is dismissed but with no order as to costs.

MANMOHAN, J

September 12, 2008
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