

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

+     **CrI.M.C. 2750/2001**

**Date of Reserve:** 09.09.2009

**Date of Decision:**16.09.2009

#     M.L. BHATIA & ANR. .... Petitioners

!                             Through: Mr. Gurmeet Kaur Kwatra, adv.

Versus

\$     STATE & ANR. .... Respondents

^                             Through: Mr. Arvind Kr. Gupta, APP

**CORAM:**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

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

:     **MOOL CHAND GARG,J**

1. This petition has been filed by the petitioner Shri M.L. Bhatia and others aggrieved from the order framing charges against them under Section 406 IPC by the Metropolitan Magistrate on 09.04.1996 in Case FIR No. 338/91 registered at P.S. Lajpat Nagar, on the allegation that portion of the shop belonging to the petitioner was licensed to her on monthly charges of Rs. 6,000/- per month for keeping the lady's garments for sale. On 05.10.1991 when the shop was opened all the garments of the complainant displayed for sale

were found missing as the premises in which the garments were kept was in joint possession of the petitioner & complainant for which they also had a key in addition to the keys handed over to the complainant. Thus, they were entrusted with the property and, therefore, their dishonest removal of the ladies garments amounted to committing an offence under Section 406 IPC and on that basis the charge was framed. It is a matter of record that the garments were recovered from the residential premises of the petitioner. After the Police filed challan under Section 173 Cr.P.C. the charges were framed against the petitioner as aforesaid.

2. This order was, however, challenged by the petitioner before an Addl. Sessions Judge by filing a revision under Section 397 Cr.P.C. The said revision petition was dismissed vide order dated 14.08.2000. Against the said order the petitioner came to this Court vide order dated 09.11.2000 passed in Crl. Misc. Main. 4227/2000, this Court was pleased to remand the matter to the Metropolitan Magistrate for deciding the same afresh after taking into consideration all the material on record including the documents which were sought to be relied upon by the petitioner in the light of the judgment delivered by the Hon'ble Supreme Court in the case of Satish Mehra Vs. Delhi Administration 1996 (3) Crime 85 SC as well as the judgment delivered in the case of State of M.P. Vs. Mohan Lal Soni 2000 (3) Crimes 105 (SC).

3. After Remand, the Magistrate considered the matter again on 12.03.2001 to the following effect:

Order on Charge

I have heard the arguments advanced before me and perused the material on record. I have gone through the statement of the complainant and the various documents on record i.e. letter dated 3.10.1991, and letter dated 04.10.1991 and also the seizure memo. The statement of the complainant has also been perused by me and the same is very clear. There is sufficient material on record to proceed against both the accused for the offence under Section 406 of IPC. Charge is being framed however in the interest of justice and keeping in view the fact that the matter is old case pertaining to the year 1991. Complainant is directed to be examined first.

Be listed for evidence for 25.07.2001.

Metropolitan Magistrate  
New Delhi

4. Not satisfied with it, the petitioner again filed a revision namely Crl.Rev.No. 58/2001 before the Addl. Sessions Judge which was disposed of vide order dated 06.07.2001. The only ground taken before the Addl. Sessions Judge was that two documents i.e. the letters dated 03.10.1991 and 04.10.1991 were not considered by the Magistrate despite the order of this Court dated 09.11.2000. The Addl. Sessions Judge again dismissed the petition. Relevant portion of the order is reproduced hereunder:

7. I have considered the effect of the said document on the charge in these proceedings, so as to satisfy myself if the contention raised on their basis would have secured a discharge order for the two petitioners from the ld. trial court. On careful

appraisal of the contentions raised, I am of the considered opinion that the petitioners cannot get any benefit at the stage of charge on the basis of documents dated 03.10.1991 and 04.10.1991. Assuming the documents are genuine, they together are not sufficient to dispel the allegations made in the FIR through complaint dt. 05.10.1991, inasmuch as there is a specific averment that on 1.10.91, petitioner no.1 had tried to secure in writing from Madhu Soni that the entire stock in question was property of the former, apparently a brazen attempt to compel the said lady to forfeit her right over the property in question. In these circumstances, it cannot be said that there was no entrustment nor any dishonest misappropriation. The shop where the goods were stocked belonged to the petitioners and the goods were to be kept for display and sale only there. How far the claim that the fabricators of the garments had expressed desire to shift the goods elsewhere is correct will have to be tested only at the trial. It cannot be assumed to be the actual state of affairs merely on the basis of the material filed by the petitioners.

8. For foregoing reasons, I do not find any merits in the revision petition. Same is dismissed. File of the trial court be returned with a copy of this judgment. File of the criminal revision be consigned to record room.

5. It is against this aforesaid order, the present petition has been filed by the petitioner under Section 482 Cr.P.C. which is pending before this Court since 2001.

6. The prayer made in this petition are as follows:

- i) Quash the order of the Sessions Court dated 06.07.2001 in criminal revision No. 58/2001 State Vs. M.L. Bhatia;
- ii) Quash the order of the Metropolitan Magistrate dated 12.03.2001 in FIR 338/91 State Vs. M.L. Bhatia;
- iii) Direct the Metropolitan Magistrate's court to comply with the Nov. 9, 2000 order of this Hon'ble High Court in Crl.Misc.Main 4227/2000 and proceed

according to law by first disposing of the pending application of the petitioner under Section 294 Cr.P.C. for admission or denial of the October 3 and 4, 1991 documents;

- iv) Grant stay of the proceedings before the Metropolitan Magistrate in FIR 338/91, State Vs. M.L. Bhatia and Anr. P.S. Lajpat Nagar;
- v) Pass any other order/s deemed, just, fit and proper in the facts and circumstances of the case.

7. The counsel for the petitioner to seek the relief has raised the following grounds:

A. The learned Sessions Judge erred in not ensuring that the revisional jurisdiction be exercised to direct the learned Metropolitan Magistrate to comply with the Nov. 9, 2000 order of the Hon'ble High Court in Crl.Misc.Main 4227/2000 by which the High had directed the Magistrate to decide the issue of the existence of a prima facie case against the petitioner "afresh after taking all the material on record into consideration in accordance with law."

B. The learned Sessions judge erred in not directing the learned Metropolitan Magistrate to comply with the Nov.9, 2000 order of this Hon'ble High Court and accordingly proceed to decide the pending application of the petitioner for admission or denial under Section 294 Cr.P.C. of the two documents dated 03.10.1991 and 04.10.1991 and then proceed to decide the effect on the existence or absence of a prima facie case.

C. The learned Sessions Judge erred in not directing in his revisional jurisdiction the learned Metropolitan Magistrate examine whether further investigation was required in the case in view of the fact that the police had held back from the court both the documents dated 03.10.1991 and 04.10.1991 to ensure a fair and just administration of the criminal justice system.

D. The learned Sessions Judge erred in not

exercising his revisional jurisdiction to remand the matter back to the Metropolitan Magistrate after finding that she had not considered the effect of the two documents after mentioning these documents and instead converting his revisional jurisdiction into one of appeal jurisdiction in the name of speedy justice. This was in violation of the Supreme Court judgments in Satish Mehra Vs. Delhi Administration and State of M.P. Vs. Mohan Lal Soni.

E. The learned Sessions Judge even while sitting in appeal while exercising revisional jurisdiction erred in not considering at all the document dated Oct.4, 1991 and its effect despite the specific direction in the Nov. 9, 2000 order of this Hon'ble High Court having pointed out the two Supreme Court judgments- Satish Mehra Vs. Delhi Administration 1996 (3) Crime 85 SC and State of M.P. Vs. Mohan Lal Soni 2000 (3) Crimes 105 (SC). The learned Sessions Judge did not consider this document even while mentioning in his impugned order that the document dated 3<sup>rd</sup> and 4<sup>th</sup> Oct. 1991 had been put on record by the petitioner by way of an application under Section 294 Cr.P.C. which application remains undecided till today despite this Hon'ble High Court's order of Nov. 9, 2000 directing the district courts to proceed "according to law" in considering the documents dated Oct 23 and 4, 1991.

8. He has stressed upon the two letters dated 03.10.1991 and 04.10.1991 written to the complainant and to the SHO and argued that the removal of goods to his house was with the consent of the complainant. However, perusal of the aforesaid two letters only shows that there were some discussion between the parties regarding removal of the goods from the present premises to some other premises. The letter dated 03.10.1991 reads as under:

To

Miss Pam alias Madhu Soni  
Miss Tiny/ Nutan Soni

Dear Madhu,

This has reference to several discussions we had with you when you had expressed desire to remove your goods kept for sale at Panna Boutique, Since you have not so far collected the goods and as desired by you, we have kept your goods at safe custody which you may kindly collect immediately as they are unnecessary occupying space.

yours faithfully,  
(M.L. Bhatia)

9. The letter dated 04.10.1991 reads as under:

S.H.O.  
Lajpat Nagar,  
New Delhi

Dear Sir,

I am authorized representative of M/s A.K. Midha & Co. Miss Pam alias Madhu Soni and Miss Tiny alias Nutan Soni who are working as air hostesses with Indian Air Lines vayudoot requested me to keep some of their goods like suits etc. along with our goods at Panna Boutique, 18, Defence Flyover Market, owned by M/s. A.K. Midha & Co., as they did not have their own sale outlet.

They have recently made arrangements with Blossoms Beauty Parlour, M, Block Greater Kailash, Second floor and requested me to hand over the goods to them on First October, 1991. As they failed to remove the goods from the shop. I have kept these under safe custody at my place. Where they were initially and originally handed over to me. This action has been taken and informed to you.

Thanking you,

(M.L. Bhatia)  
Panna Boutique  
18, Defence Flyover Mkt.,  
New Delhi

10. The aforesaid letters does not prove any authorization in favour of the petitioner to remove the ladies garments from those licensed

premises and to keep them at his house with the consent of the complainant.

11. The Magistrate as well as Ld. ASJ has taken into consideration both these letters. These are not the documents which have been written by the complainant. According to the complainant, the goods which were lying in a licensed premises of which there was a possession jointly with that of the complainant as well as with the petitioner, were removed and there is no dispute about it that the garments were found from the residential premises was of the petitioner and thus it was a case of mis-appropriation.

12. Even if for the sake of arguments it is assumed that the garments were removed by M.L. Bhatia with the consent of the complainant this would be a matter of evidence to be proved by the petitioner. In the absence of any admission of this fact by the complainant or her statement that there is any tacit understanding between the petitioner and the complainant, it cannot be presumed that any such authority was given to the petitioner.

13. In this case the complaint is dated 05.10.1991. This itself shows that fabrication of the document dated 04.10.1991 cannot be over-ruled. On 08.10.1991 the recovery was effected from the residence of the petitioner. The letter dated 04.10.1991 does not bear any seal of the SHO. Similarly, the letter dated 03.10.1991 has not been sent by

any registered post nor has got any Registry receipt. Moreover, there is no document which has been brought on record by the petitioner which may prove that there was any request made on behalf of the complainant that she wanted removal of the cloths from the premises in question or that she authorized the petitioner to keep those goods at his house.

14. The scheme of the Code of Criminal Procedure provides for a remedy by way of a revision against the order passed by the subordinate Court under Section 397 Cr.P.C. The said provision reads as under:

**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 situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 398.

(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 proceeding.

(3) If an application under this section has been made

by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the of the of them.

15. A bare reading of that provision goes to show that no second revision can be entertained. Thus, once the petitioner had availed the remedy of revision not once but twice, he has no right to come to this Court may be under the garb of terming their petition under Section 482 Cr.P.C. which is the attempt made on behalf of the petitioner.

16. The law in this regard is well settled by the Apex Court in the case of Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr. (2005) 2 SCC 571 :

5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

17. The facts of this case needs to be analysed in the light of the ratio of the aforesaid judgments which circumscribe the powers

vested in this Court under Section 482, 483 of Cr.P.C. whenever an attempt is made to again invoke the power of revision though in the garb of petition under Sections 482, 483 in view of the bar created under Section 397(3) Cr.P.C. once the petitioner has already availed the remedy of revision in respect of his grievance by approaching the Sessions Court. The ratio of the judgment, as quoted above, makes it abundantly clear that while the powers vested in this Court under Sections 482,483 Cr.P.C. are wide enough to still interfere in a case where even the revisional jurisdiction has already been invoked by the Sessions Court on a petition filed by the petitioner under Section 397(1) of the Cr.P.C. but it has to be exercised only in a case where there is grave miscarriage of justice or abuse of the process of Court or where the required statutory procedure has not been complied with or where there is failure of justice or that the order passed or sentence imposed requires correction.

18. Before this Court where nothing has been brought to my notice calling for intervention either to do complete justice between the parties, or that there is mis-carriage of justice or an abuse of the process of the Court. It is also not a case where mandatory provisions of law has not been complied with. Even if for the sake of arguments it is admitted that the complainant should have been called upon to admit or deny these documents, there is no document,

which requires admission or denial by the complainants. In this regard this Court in its judgment in Gajraj Singh Tomar Vs. State & Ors. 2009 (3) AD (Delhi) 74 and also in Chander Bose Vs. Ved Prakash & Ors. 2009 (4) AD Delhi (20) has taken the view that unless and until exceptional circumstances arise and miscarriage of justice is shown, which makes out a case for interference by this court in exercise of its power under Section 482 Cr.P.C. are brought to the notice of the court, the second petition under Section 482 cannot be entertained.

19. The submission made on behalf of the petitioner that his application calling upon the complainant under Section 294 Cr.P.C. should have been decided first is mis-conceived for the simple reason that no document which might have come from the side of the complainant or which would have been addressed to the complainant have been placed on record by the petitioner which could have called for admission or denial by the complainant. His second submission that in this case the Sessions Judge should have remanded back the case to the Magistrate instead of deciding the revision itself is again of no consequence because the order of the Magistrate quoted above goes to show that the Magistrate had considered letter dated 03.10.1991 and 04.10.1991 and, therefore, it was not a case where any remand was required. Revisional Court was even otherwise competent to decide the matter itself taking into

consideration the entire record which was relied upon by the petitioner and which has been done by the Revisional Court.

20. Thus, I do not find any reason, which enables the petitioner to approach this Court under Section 482 Cr.P.C.

21. Taking all the facts into consideration the petition filed by the petitioner is dismissed with cost of Rs. 50,000/- because it is a frivolous petition and by filing this petition, the petitioner has delayed the trial for a period of more than 6 years.

**Cr1.M.A.3367/2001***(stay)*

The interim orders stand vacated.

The application is disposed of.

**MOOL CHAND GARG, J.**

SEPTEMBER 16, 2009  
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