

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

+ **Crl. Rev. Petition No. 167/2008**

Reserved on : 16.09.2009
Date of Decision : 21.10.2009

Sunil Kumar

.....Petitioner

Through: Mr. Pawan Mittal and Mr.
Rajeev, Advs. for the
petitioner.

Versus

State

..... Respondent

Through: Mr. Pawan Bahl, APP

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers can be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J.

1. This is a revision petition filed by the petitioner against the order dated 5th December, 2007 by virtue of which the learned Metropolitan Magistrate has directed the framing of charges against the petitioner under Section 411/473/34 IPC.

2. Briefly stated the facts of the case, as given in the impugned order are that one Mr. Deepak Verma had lodged a complaint on 6th March, 2007 at about 11.15 p.m. stating that he had received a telephonic call from his driver named Ram Bahadur who had gone to drop his mother at a function and then to pick her up but he did not reach the place from where he was supposed to pick her up. On enquiry it had transpired that the driver Ram Bahadur intimated that he had gone to

Karampura Terminal for easing himself and it was at that point of time the car was stolen when it was parked. The complainant reached the spot and found the driver Ram Bahadur to be in a drunken condition and incoherent and consequently he was booked for having committed an offence of criminal breach of trust for which an FIR No. 148/2007 under Section 408 IPC was registered at Police Station Moti Nagar, Delhi. During the course of trial, the driver Ram Bahadur pleaded guilty to the offence under Section 408 IPC. The learned Metropolitan Magistrate took a lenient view and sentenced him to six months imprisonment.

3. Subsequently thereto another FIR No. 552/2007 under Section 20 of the NDPS Act and under Sections 411 and 420 of IPC was registered at P.S. Punjabi Bagh, New Delhi against the present petitioner Sunil Kumar who is purported to have made a disclosure statement that he was having Honda City car in respect of which Ram Bahadur had committed an offence of breach of trust. The accused Sunil Kumar is purported to have made a disclosure statement and in pursuance to the same, he got the Honda City Car recovered from Desh Raj and this is how both Desh Raj and Sunil Kumar were alleged to be prima facie of having committed an offence under Section 411/473/34 IPC by the learned Metropolitan Magistrate by the impugned order and directed framing of charge. The offence under Section 411 IPC was on account of having been found in possession of the stolen property while as the offence under Section 473 was directed to

be framed on account of the fact that the vehicle number of the car in question was found to be changed. The learned Magistrate after hearing the learned counsel for the petitioner directed the framing of charges against the petitioner for these two offences by invoking Section 34 IPC.

4. The petitioner feeling aggrieved by the said impugned order directing the framing of charges for the aforesaid two offences has assailed the same by the present revision petition.

5. The main contention of the learned counsel for the petitioner is that the charges under Section 411 and 473 IPC have been directed to be framed against the present petitioner although there is no evidence against the petitioner except the alleged disclosure statement which would show that the vehicle in question was recovered at his instance. It was urged that even if the evidence and the statement which are adduced at this stage are taken on its face value even then the vehicle in question was recovered from the possession of Desh Raj and it was not in the exclusive possession of the petitioner and therefore, charge u/s 411 IPC could not be framed and the stolen property is one of the basic ingredients under Section 411 IPC. It was next contended that the theft of the vehicle had taken place in March while as it was recorded in July whereas the person should be found to be in possession of the goods immediately after the incident which is not so in the instant case. The petitioner in support of his contention has relied upon the following judgments:

Trimbak Vs. State of M.P. AIR 1954 SC 39

Rajinder Kumar Vs. State 23 (1983) DLT 42

Nakali & Anr. Vs. State 1978 Cr.L.J. 379

Mahadeo Bind Vs. State of Bihar CrL.L.J. 1647

Janak Yadav Vs. State of Bihar 1960 CrL.L.J. 1646

Moti Lal Vs. State 1959 CrL.L.J. 219

6. So far as the offence under Section 473 IPC is concerned, it was contended that since the vehicle in question was not recovered from the possession of the petitioner, and therefore, merely on account of the fact that the vehicle was bearing the registration number other than one which was originally assigned to it could not be assumed that the petitioner has changed the number and the charge against him could not be framed.

7. The learned APP has contested the submissions of the learned counsel for the petitioner and contended that at this stage what Court has to see is that there must be 'grave suspicion' of having committed an offence by the petitioner and since the vehicle in question has recovered at the instance of the petitioner he was in constructive possession of the vehicle. With regard to offence under Section 473 IPC also, it was contended that the vehicle in question had a number other than the genuine number which clearly shows that the vehicle was recovered from the joint possession of the petitioner and the co accused was compared with so far as the registration number is concerned. It is urged that prima facie it was the petitioner who

would have changed the said registration number of the vehicle with a view to evade the detection.

8. I have gone through the judgments cited by the learned counsel for the petitioner as well as considered the submissions made by the respective sides. I do not agree with the submissions of the learned counsel for the petitioner that in the instant case the petitioner could not have been charged for an offence under Section 411 IPC. The learned counsel for the petitioner has cited the judgments which are essentially distinguishable from the facts of the present case. Those judgments are dealing with the question of exclusivity of possession at the time of conviction of the accused. At the time of framing of charges what is sufficient to warrant the framing of charge is the 'grave suspicion' or a 'prima facie' case. In the instant case, the petitioner is purported to have made a disclosure statement and got the vehicle recovered from the possession of Desh Raj. No doubt, the vehicle was in possession of the co-accused but merely because Desh Raj was in physical possession of the vehicle it does not mean that the petitioner was not in constructive possession of the vehicle or that the vehicle was not in exclusive possession. There can be more than one person who may have exclusive possession of the stolen property and both of them may have a common intention which obviously the learned Magistrate has taken advantage of and directed the framing of charges under Section 411 IPC by invoking Section 34 IPC. I do not find that there is any impropriety, illegality or

incorrectness in the impugned order so far as the framing of charges under Section 411/34 IPC is concerned. Similarly, so far as the Section 473 IPC is concerned, the same reads as under:

“473. Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise.-Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section this Chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

9. A bare perusal of the aforesaid Section clearly shows that from the very fact that the petitioner had changed the vehicle number, chassis number or the engine number of the vehicle to a number different than the one which was originally given to it at the time of recovery clearly shows that prima facie they were guilty of an offence under Section 473 IPC also and for that purpose also the charge has been rightly framed against the petitioner.

10. For the reasons mentioned above, I do not find that there is any merit in the petition, and accordingly the same is dismissed.

V.K. SHALI, J.

October 21, 2009
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