

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

+ **CRL.REV. P.NO.357/2009**

Reserved on : 01.7.2009

Date of Decision : 15.12.2009

SH.SUNIL AGGARWAL

.....Petitioner

Through: Mr. S.K.Sharma, Advocate.

Versus

STATE THR. CBI

..... Respondent

Through: Mr.Vikas Pahwa, SC for
CBI with Mr.Biswajit
Kumar Patra, Advocate.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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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 ? | 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 6.6.2009 passed by Sh.Vinod Goel, learned Special Judge rejecting the application of the petitioner u/s 319 of Cr.P.C. for summoning of PW-19 Tika Ram Wagley having as an accused.
2. Briefly stated the facts of the case are that the petitioner along with some other officials of the bank is facing a trial for an offence u/s 420/468/471/34 IPC for having opened 26 accounts and withdrawing a huge amount from the bank and transferring the same to these fictitious accounts, and therefore, using the said amount for his own benefits.

3. The prosecution in support of its case had examined 19 witnesses. After examination of these witnesses, the present petitioner Sunil Kumar, an accused filed an application u/s 319 of Cr.P.C. for summoning of Tika Ram Wagley who was examined as PW-19 and who was working as an Accountant cum Desk Clerk of State Bank of India, P. Nagar branch Delhi on the ground that Tika Ram Wagley was also involved as an accused and needs to be tried jointly along with the present petitioner and the other accused persons. The reason for this was that it is alleged that Tika Ram Wagley in between the relevant period from 1990 to 1992 was authorized to open Saving Bank account and 26 accounts which were allegedly opened during his tenure. It was alleged that he has admitted during his examination that he was authorized to sign account opening form or introduce some of the account holders of the bank etc. Therefore, it is assumed that in respect of some of these 26 accounts he may have completed the formalities which shows his complicity.
4. The learned counsel for the petitioner had relied upon the language of Section 319 of Cr.P.C. to urge that where in the course of an inquiry or trial of an offence, it appears from the evidence that any person not being an accused has committed an offence for which such person should be tried together with the accused person, the Court may proceed

against such person for the offence which appears to have been committed.

5. The learned counsel for the petitioner had referred to the testimony of PW-6 Sh. Madan Gopal Batra, PW-7 Sh. Ravi Das, PW-8 Sh. Beg Raj and PW-19 Tika Ram Wagley and PW-22 Sh. N. Sureendran (IO) in support of his contention.
6. I have heard the learned counsel for the petitioner as well as learned counsel for the respondent and also gone through the impugned order and as well as the testimony of the witness mentioned above.
7. In order to appreciate the point being urged by the learned counsel for the petitioner, it may be pertinent here to mention that the entire essence of submissions of the learned counsel for the petitioner is to the effect that Tika Ram Wagley was posted in the Pratap Nagar Branch of Bank where the alleged cheating, forgery and using of forged documents as genuine has taken place for the purpose of creation of fictitious accounts and transfer of funds and consequent loans given by the bank. The said PW-19 Tika Ram Wagley has only admitted that he as an Accountant was authorized to open the account by signing an account opening form, introduction form and pay in slip etc. Therefore, it is assumed by the learned counsel for the petitioner that PW-19 Tika Ram Wagley has admitted that he might have opened accounts of any of the person out of these 26 fictitious accounts to show his complicity.

8. The prayer of the learned counsel for the petitioner for summoning PW-19 of an accused was disallowed by the learned Trial Judge primarily on the ground that Section 319 of the Cr.P.C. which enables the Court to summon any person during the course of inquiry or a trial has been interpreted by the Supreme Court in number of cases to hold that a person under said Section can be summoned only if the nature of offence which is adduced against such a person is of such a high degree that it will in all likelihood result in his conviction. In other words, merely by creating a suspicion about involvement of a person is not sufficient ground to summon an accused person to face the trial.
9. Thus the preposition of law which is laid down above is not in dispute that before a person can be summoned to face the trial and put the clock back the quantum of evidence which must be adduced against such a person sought to be summoned has to be a very high degree as in all likelihood will result in his conviction. That means the amount of evidence or the quantum of evidence which is normally required at the time of framing of charge which is in the nature of 'grave suspicion' alone that will not be sufficient to summon the accused to face the trial. Reliance in this regard is placed on **Michael Machado & Anr. Vs. CBI** AIR 2000 SC 1127.
10. Coming back to the facts of the present case, so far as the statement of PW-19 Tika Ram Wagley itself is concerned that

cannot be read as an evidence against his own self. Assuming though not admitting that such a statement of Tika Ram Wagley can be taken as an evidence against his own self even then what he states is only a general practice that he as an Accountant could have opened the account of a person after verifying his account opening form, introduction form and the pay in slip that does not necessarily mean that the Court can draw an inference against Tika Ram Wagley that it was he who had signed the account opening form, pay in slip or the introduction form of the petitioner who admittedly was known to P.K.Seth, Manager of the Bank and who had been involved with him to get the fictitious accounts opened. P. K. Seth is already facing trial with the present petitioner. Thus the testimony of Tika Ram Wagley cannot be read against his own self as it is not incriminating against him.

11. As regards the testimony of other witnesses, they are also giving a general practice which was available in the banks including Pratap Nagar Branch of the State Bank of India where the alleged offence is purported to have taken place. The fact that Accountant was authorized to open the account after signing the account opening form, introduction form or the pay in slip can hardly be ground for summoning the Accountant himself. In any case this does not show any complicity of the PW-19. I am therefore in full agreement with the view of the learned Trial Court that there is no

evidence much less the evidence which warrants conviction of the PW-19 in case he is summoned. As a matter of fact, there is no evidence at all showing the complicity of PW-19.

12. It seems that the entire exercise of the petitioner is to delay the disposal of the matter. It is already come in evidence that PW-19 who was recalled for the purpose of cross examination could not be served as his whereabouts were not known. Therefore, the exercise which the petitioner has embarked on is that if by any stretch of imagination he is able to get Tika Ram Wagley summoned he knows for certain that Tika Ram Wagley is not available and therefore, he would like to draw the benefit out of his non-appearance and shift the entire burden on to him and in any case delay the disposal of the matter.
13. For the reasons mentioned above, I am of the considered opinion that there is no evidence much less the evidence which is likely to result in conviction of Tika Ram Wagley which warrant his summoning.
14. Accordingly, there is no infirmity, impropriety, illegality or incorrectness in the order passed by the learned Trial Judge. The petition of the petitioner is totally misconceived and the same is accordingly dismissed.

V.K. SHALI, J.

DECEMBER 15, 2009
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