

+ CRL.M.C. 3467/2008

Z.A.KHAN

..... Petitioner

Through Ms. Radhika Chandrashekar for Mr. A.
Maitri, Adv.

versus

STATE

..... Respondent

Through Mr. Manoj Ohri, APP for the state with SI
Manohar Lal**CORAM:****HON'BLE MS. JUSTICE GITA MITTAL****ORDER**

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22.09.2009**Crl.M.A.No. 11138/2009**

1. Exemption allowed subject to just exceptions.

Crl.M.A.No. 11137/2009

2. Notice.

Mr. Manoj Ohri accepts notice.

3. Having regard to the nature of the application, counsels are orally heard.

4. By this application, the applicant has sought amendment of the petition. It has been pointed out that by bonafide error, the petitioner

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

has merely stated that a challenge is laid to the order dated 10th September, 2008 whereas the petition raises a substantive challenge to the order dated 28th January, 2005. It is submitted that other this minor addition, no other additions are prayed for.

I have heard learned counsel for the parties.

For the reasons stated, the amendment is allowed.

The amended petition filed by the petitioner is taken on record.

Crl.M.C.No. 3467/2008

5. Heard learned counsel for the parties.
6. The petitioner was summoned by the court on filing of the charge sheet in the case arising out of FIR No. 6/96 registered by police station Punjabi Bagh, New Delhi for alleged commission of offences under section 109/120/200/218 of the IPC.
7. On a consideration of the matter at the stage of framing of charge, the learned trial court had passed an order dated 4th February, 2002 holding that there was no sufficient evidence supporting the implication of the petitioner in the commission of the alleged offences.

In this view of the matter, the learned Metropolitan Magistrate had discharged the petitioner because there was no sufficient material for framing a charge against the petitioner was consequently discharged by the same order. The court directed framing of charges

against the other accused persons.

8. Three revision petitions being Crl.Rev. No. 173/2003, 175/2003 and 176/2003 filed by these revisionists namely Darshan Singh, Sh. R.P. Saxena, Sh. Ishwar Bansal and Sh. Narender Singh assailing the order dated 4th February, 2002 of the learned Metropolitan Magistrate were filed before the sessions court.

9. The matter was thereafter remanded for fresh consideration so far as the cases of the revisionists were concerned before the learned trial court.

10. The present petitioner has placed before me a copy of an order dated 20th January, 2005 when the trial court considered the order which was passed by the learned sessions court. The learned magistrate was of the view that for the reason that the learned appellate court by the order dated 16th November, 2004 had set aside the order dated 4th February, 2002 as a whole and remanded the case for fresh hearing, the present petitioners who had been discharged earlier were required to be summoned and heard afresh. In this background, notice was issued to the present petitioner by the order dated 20th January, 2005.

11. On receipt of the summons, the petitioner filed an application under section 258 of the CrPC pointing out that the petitioners were

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duly discharged by the earlier order and there was no occasion for their being summoned again. This application was dismissed by the learned trial court by an order passed on 10th September, 2008. Aggrieved by the order dated 20th January, 2005 of the learned Metropolitan Magistrate and the order dated 10th September, 2008 the present petition has been filed.

12. It is necessary to notice the statutory scheme so far as a challenge to an order of discharge is concerned. It is also noteworthy that the order discharging the petitioners was not assailed by the state by any appropriate proceedings. As per the specific statutory provisions as contained in the Code, if aggrieved by an order of discharge, the State would have been required to file a revision petition before the sessions court against the order of discharge. It is an admitted fact that no such petition was filed and no leave was granted to the state to petition against the order dated 4th December, 2002.

13. Perusal of this order would clearly show that there was no occasion for the learned sessions court to consider the cases of the present petitioners.

These revisions came to be allowed by an order passed on 16th November, 2004.

14. The observations of the learned sessions court in paras 10, 11, 13

and 15 of the judgment clearly show that the court was concerned only with the challenge laid with regard to framing of charge against the petitioners. The arguments of the state before the court were restricted to the cases of these petitioners. It was on a consideration of the evidence placed by the prosecution with regard to the petitioners that the court had observed as follows :-

"13. However, I am in total agreement with the Ld APP that this court can not take up meticulous scanning of the evidence to find out the charges. Suffice it to say that the Ld MM was not placed with the relevant opinion while at the time of framing of the charges nor the Ld court below appraised all the facts about compounding of the offence, which was also taken note by the LD MCD Tribunal.

14. In view of the above, I find that the material requires re-consideration at the hands of the Ld. MM and the LD. MM shall consider the question of aspect and effect of compounding all the offences while framing the charge. Keeping in mind with the submissions made by Sh. Ramesh Kumar Madan, and Sh. D.K. Rustagi.

15. The factual situation as is appearing from the record show that the Ld. MM has not considered the allegations appearing against each of the individual petitioners for constituting the offence and also the fact that they were not sent up for trial by the investigating agency. In view of the above, I find that the following order would meet the ends of justice :-

ORDER

All the four revision petitions are disposed of with the direction to the Ld MM to re-consider the entire aspect in the background of the observations and to pass a fresh order in accordance with law, after affording an opportunity to both the sides to vindicate their respective claims. Consequently, the order dated 04.02.2002, is set aside. The petitioners shall appear before the trial court on 20.01.2005."

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15. No notice whatsoever in the revision petition was issued to the petitioner and no opportunity was given to defend the order of discharge at all. A reading of the order dated 16th January, 2004 clearly shows that the court was only concerned with the challenge made by the person against whom charges had been framed. In this background, certainly merely because the order dated 16th January, 2004 has recorded that the order dated 4th February, 2002 is set aside as a whole, it has to be borne in mind that the challenge before the sessions court was to the cases of the petitioners who were before it and not to the case of the present petitioner.

16. So far as the order dated 10th September, 2008 is concerned, the same is primarily based on the view that the trial court has no power to review its own order under the Criminal Procedure Code.

17. The order dated 4th February, 2002 so far as it discharge the present petitioner had attained finality. In view of the above, it is to be held that the order dated 28th January, 2005 as against the petitioner is contrary to law and is hereby set aside and quashed.

This petition is allowed in the above terms.


GITA MITTAL, J

SEPTEMBER 22, 2009

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