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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 12th July, 2010

Date of Order: August 05 , 2010

+ Crl.MC 2899 of 2009

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Syed Nusrat Ali

Through: Mr. Abhay Kumar & Mr. Tenzing Tsering, Advocate

05.08.2010

...Petitioner

Versus

State & Anr.

Through: Mr. Vikas Pahwa, Advocate for State

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

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 judgment should be reported in Digest? Yes.

JUDGMENT

1. By way of present petition under Section 482 Cr.P.C the petitioner has prayed for quashing of an order dated 20th July, 2009 passed by Special Judge, NDPS, Patiala House Courts, New Delhi. Learned Special Judge, NDPS, vide the impugned order partly allowed the Crl. Revision and partly set aside the order dated 27th April, 2009 passed by learned ACMM and disposed of the revision petition.

2. Brief facts relevant for deciding this petition are that learned ACMM vide order dated 27th April, 2009, on an application made by petitioner no.1 Syed Nusrat Ali passed an order directing ACP Mr. Amit Roy and the Investigating Officer to appear in person and to show cause as to why proceedings under Contempt of Courts Act and for other offences be not initiated against both of them. Against this order of learned ACMM, the State filed a revision and the learned Special Judge NDPS Act vide order dated 20th July,

2009 set aside the order dated 27th April, 2009 passed by learned ACMM qua ACP Mr. Amit Roy but held the order qua Investigating Officer Ram Kumar Chaudhary.

3. By present petition applicant/ petitioner no.1 Syed Nusrat Ali assailed the order of learned Special Judge (NDPS Court) contending that there was no power of revision vested in learned Special Judge since the order passed by learned ACMM was an interlocutory order. Petitioner also assailed the order passed by learned Special Judge, NDPS on merits.

4. I have perused the order of learned ACMM and learned Special Judge, NDPS. After perusal of the order of learned ACMM, I find that learned ACMM grossly exceeded his powers in issuing show cause notice as to why proceedings under Contempt of Courts Act be not initiated against the investigating officer and ACP. It is well settled that neither ACMM nor any Court below the High Court has inherent powers under Cr.P.C. The inherent powers under Criminal law are vested only in High Court. All courts below High Court can exercise statutory powers only in accordance with Cr.P.C. When a Court of ACMM or a Court of learned ASJ issues show cause notice to any person, it must be in accordance with the provisions of Cr.P.C. Surprisingly, the learned ACMM has not even mentioned as to under which provisions of law, he had the authority or powers to issue show cause notice to an investigating officer or ACP to initiate proceedings under Contempt of Courts Act or to initiate proceedings for commission of offence. It is expected that when a matter comes before learned Metropolitan Magistrate, ACMM or Sessions Judge, during trial for exercise of its powers, it has to specify as to under which provision of Cr.P.C or Penal Code, the powers were being exercised. If there was no provision under Cr.P.C of issuing a show cause notice to an investigating officer or to his superior officer for contempt of court, such powers cannot be exercised by the subordinate courts.

5. A perusal of order of learned ACMM would show that he considered that the conduct of two police officials had the effect of lowering the reputation of the Court of learned ACMM in the eyes of the applicant or other persons associated with him. He, therefore, issued a show cause notice to both of them. A perusal of provisions of Contempt of Courts Act would show that a Court subordinate to High Court has no powers to initiate proceedings under Contempt of Courts Act. Under Section 10 of Contempt of Courts Act, the High Court alone can take cognizance of an alleged contempt having been committed in respect of subordinate Courts. In order to bring the conduct to the notice of High Court, a subordinate court is supposed to send a reference of the matter to the High Court. A subordinate court cannot itself assume jurisdiction under Contempt of Courts Act and issue show cause notice as to why contempt proceedings should not be initiated. The provisions of Contempt of Courts Act cannot be resorted to by subordinate court even as a threatening provision. In the present case, the learned ACMM had all material before him, if he considered that it was a fit case for initiation of proceedings under Contempt of Courts Act, he ought to have sent a reference to the High Court and asked the High Court for initiation of contempt proceedings. It was for the High Court to issue show cause notice to the officer concerned. The order of learned ACMM suffered from total lack of jurisdiction. The learned ACMM exercised the powers not vested in it. The learned Special Judge, NDPS, did not discuss the powers available to learned ACMM under Cr.P.C and only after discussing some facts allowed the revision petition qua one of the police officials. I consider that the order of learned ACMM was itself not tenable.

6. It is settled law that this Court can suo moto exercise powers under Article 227 of the Constitution of India to keep the subordinate courts within the four walls of law. I, therefore, in exercise of powers under Article 227 of the Constitution of India, set aside

the order of learned ACMM issuing show cause notice to the Investigating Officer/ ACP. However, Court of learned ACMM will have liberty to refer issue of contempt to High Court. The present revision petition was filed by the applicant Syed Nusrat Ali who wanted proceedings against ACP and Investigating Officer to be initiated. The applicant (petitioner no.1) would be at liberty to take resort to appropriate law to initiate action, if so advised, and if there was a cause for the same. The action, as initiated by learned ACMM, was illegal and contrary to law.

7. The present petition stands disposed of with above observations.

August 05, 2010
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SHIV NARAYAN DHINGRA J.