

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

Judgment reserved on: July 20, 2010
Judgment delivered on: July 28, 2010

+ **CRL.M.C.NO.2978/2009**

RAJINDER SINGH

....PETITIONER

Through: Mr. Rajesh Mahajan, Advocate with
Ms. Satsheel Sheokand, Advocate,
Mr. Ajay Raghav, Advocate & Mr. Mohit
Mathur, Advocate.

Versus

STATE (NCT OF DELHI) & ANR.

.....RESPONDENTS

Through: Mr. Pawan K. Bahl, APP for the
State/respondent No.1.
Mr. R.S. Juneja, Advocate for respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Rajinder Singh, the petitioner herein, vide instant petition under Section 482 of the Code of Criminal Procedure (for short "Code") has prayed for quashing of the order dated 21.10.2008 passed by learned ACMM, Karkardooma Courts in Complaint Case No.686/2004 whereby

the petitioner has been summoned to undergo trial for the offences punishable under Section 406 and 420 IPC. Petitioner has also prayed for quashing of the order of the learned Additional Sessions Judge III (East), Karkardooma Courts in Criminal Revision No.10/2009 filed against the above referred order of the learned ACMM whereby he added Sections 468 and 471 to the summoning order passed by the learned ACMM.

2. Briefly stated, facts relevant for the disposal of this petition are that respondent No.2 filed a criminal complaint against the petitioner and three others being CC No.686/2004 under Sections 420, 465, 467, 468, 469, 471 and Section 120B IPC in the court of learned ACMM, Karkardooma Courts. On conclusion of preliminary inquiry, learned ACMM summoned the petitioner only for standing trial for the offences punishable under Section 406 and 420 IPC. Learned ACMM, however, was of the view that no case for summoning of other three accused was made out.

3. Feeling aggrieved by non-summoning of other three accused persons, respondent No.2 preferred a revision petition against the impugned order dated 21.10.2008 of learned ACMM. Revision petition was filed by making State as respondent and the petitioner was not arrayed as a respondent in the petition. Learned Additional Sessions Judge also did not bother to direct respondent No.2 to implead the petitioner and three others as respondents in his revision petition.

Learned Additional Sessions Judge vide his impugned order dated 20.03.2009 declined to interfere with the order of learned ACMM so far as non-summoning of other three persons arrayed as accused in the complaint is concerned. He, however, took the view that the complaint and material on record also disclosed commission of offences punishable under Section 468 and 471 IPC by the petitioner, as such he revised the order of the learned ACMM by adding Section 468 and 471 to the summoning order.

4. The impugned order of learned ACMM dated 21.10.2008 is challenged on the ground that the allegations made in the complaint as well as the evidence and material produced during preliminary inquiry do not disclose the commission of the offence under Section 406 or 420 IPC. The order of revisional court dated 20.03.2009 is challenged on the ground that it is bad in law because the said adverse order has been passed by the learned Additional Sessions Judge ex parte against the petitioner without impleading him as a party to the revision petition and without affording him any opportunity to make his submissions against the proposed addition of the aforesaid offences of forgery and using a forged document as genuine. He, however, submitted that even the commission of the said two offences under Section 468 and 471 IPC is also not made out.

5. Learned counsel for respondent No.2, at the very outset, raised a preliminary objection to the maintainability of the petition under

Section 482 of the Code of Criminal Procedure so far as the prayer for quashing of the summoning order dated 21.10.2008 of ACMM is concerned. He submitted that if at all the petitioner is aggrieved by the aforesaid summoning order, he could easily have filed a revision petition against his summoning in the court of Sessions and since he has not availed of the aforesaid equally efficacious remedy, his prayer for quashing of the order of learned ACMM is not maintainable. In view of this preliminary objection, learned counsel for the petitioner seeks to withdraw his prayer for quashing of the order of the learned ACMM dated 21.10.2008 with liberty to file a revision petition against the said order.

6. Thus, in view of above, the prayer of the petitioner for quashing of order dated 21.10.2008 of learned ACMM is dismissed as withdrawn with liberty to the petitioner to file revision petition against the said order in the court of Sessions, if he so desires.

7. As regards the order of the learned Additional Sessions Judge dated 20.03.2009, it is pertinent to note that the summoning order was passed by the learned ACMM on a private complaint filed by respondent No.2 Pritam Singh against the petitioner. He, however, filed the revision petition against the summoning order by making State as respondent instead of petitioner. The learned Additional Sessions Judge failed to notice this infirmity and did not bother to implead petitioner Rajinder Singh as a respondent in the revision

petition and went on to hear the revision petition ex parte against the petitioner and added Section 468 and 471 IPC to the summoning order, which addition of offences to the summoning order, obviously, is adverse to the petitioner. The question which thus arises for consideration, is whether the learned Additional Sessions Judge was justified in passing an order on revision petition in the absence of the petitioner (accused) in exercise of its jurisdiction under Section 397 of the Code of Criminal Procedure.

8. Section 397 of the Code empowers the High Court as well as the Sessions Court to call for the records of the court below to exercise its power of revision in order to satisfy itself as regards 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, subject to Sub-Section (2) of Section 397 of the Code, which prohibits exercise of such power in relation to any interlocutory order passed in any proceedings.

9. Section 399 of the Code deals with the Sessions Judge's power of revision and Section 401 of the Code deals with the powers of High Court in revision. Sub-Section (2) of Section 401 of the Code reads thus:

“401. High Court's powers of revision.-

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity

of being heard either personally or by pleader in his own defence.”

10. Sub-Section (2) of Section 399 reads thus:

“399. Sessions Judge’s powers of revision.-

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceedings and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.”

11. From the reading of Sub-Section (2) of Section 399, it is clear that the provisions of Sub-Section (2), (3), (4) and (5) of Section 401 shall apply to the proceedings by way of revision before a Sessions Judge also.

12. Sub-Section (2) of Section 401 provides that no order under this Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard. In the instant case, admittedly learned Additional Sessions Judge in revision has added Section 468 and 471 to the order of summoning despite of the fact that the petitioner was not arrayed as a respondent in the revision petition and without issuing notice to him or affording him an opportunity of being heard against the proposed addition of said two offences in the summoning order. Therefore, I am of the view that the impugned order of the learned Additional Sessions Judge dated 20.03.2009 cannot be sustained.

13. Otherwise also, it would be seen from the impugned order dated 20.03.2009 that the reason given by the learned Additional Sessions Judge for adding Section 468 and 471 IPC is that the evidence led by the complainant at pre-summoning stage reveals that the accused (petitioner) prima facie forged certain documents and used them as genuine. The impugned order does not give description of the documents which were purportedly forged and used as genuine. Neither the complaint nor the pre-summoning evidence spell out which document has been forged and used by the petitioner as genuine. Therefore, prima facie there is no justification for adding Sections 468 and 471 IPC to the summoning order.

14. In view of the discussion above, I am of the opinion that the order of the learned Additional Sessions Judge dated 20.03.2009 cannot be sustained. It is accordingly set aside.

15. Petition is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

JULY 28, 2010
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