

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

Date of Reserve: 30th August, 2010
Date of Order: September 27, 2010

+CRL. M.C. 3359/2009, CRL. M.A. NO. 11367/2009

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ARVIND KUMAR ADUKIA

Through: Mr Jugal Wadhwa, Advocate

27.09.2010

... Petitioner

Versus

STATE OF NCT OF DELHI ANR.

... Respondents

Through: Mr O.P. Saxena, Addl. PP for the State.
Mr. Rajesh Yadav, Advocate for R-2

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This petition has been preferred assailing an order dated 15th May, 2009 passed by learned Additional Sessions Judge (ASJ) whereby the learned ASJ discharged the accused of offence under Section 420/468/471/409/120-B IPC.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner filed a complaint under Section 156(3) of Cr. P.C. for registration of FIR and in his complaint he alleged that the accused persons including court Bailiff in execution of an *ex-parte* decree for possession of the premises visited the residence-cum-shop of the complainant and at that time accused in connivance with Court Bailiff, committed various offences namely theft, forging of documents and preparation of a forged list of articles lying in the house. He submitted that lock of the house was broken and all articles were taken out. He alleged that a forged *superdarinama* was also prepared by the Bailiff. The learned MM, on the basis of

this complaint, got an FIR registered and Bailiff and the Decree Holder were sent for facing trial and the charges were framed against them. One of the accused expired during trial. In revision against the order of MM, the learned ASJ came to conclusion that the respondent had obtained physical vacant possession of the property in question by following due process of law i.e. by filing the civil suit and waiting till final decision and thereafter carried out execution through Court. He committed no wrong and no prosecution could be launched against the officials of the Civil Court for the act done in compliance of the orders of the Court. He found that the revisionist waited for 14 long years in the court before he obtained decree in his favour and thereafter got it executed. The respondent did not care to appear and contest the suit before the Civil Court for several years and did not choose to file an application under Order 9 Rule 13 CPC. He could not be allowed to mis-use the process of law by filing an application u/s 156(3) of Cr. P.C., making allegations against the Bailiff and Decree Holder and getting an FIR registered. He observed that there was no dishonest intention on the part of the respondent and no cheating could have been said to be committed and therefore there was no wrongful loss to the complainant or wrongful gain to the respondent and there was no ingredient of commission of offence of forgery.

3. The learned ASJ, therefore, allowed the revision petition filed by the accused and discharged the accused.

4. It is not disputed that all acts allegedly committed by the respondent/accused including the Bailiff were the acts committed during the course of an execution proceeding carried under the directions of the court. Thus if any offence was committed; it was during the proceedings of execution of decree being carried by an official of the Court at the directions of the Court. Section 195 of Cr. P.C. prohibits taking cognizance of any offence in the following words:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No court shall take cognizance-

(a)

(i) If any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) Of any abetment of, attempt to commit, such offence, or

(iii) Of any criminal conspiracy to commit, such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)

(i) Of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) Of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) Of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that court, or of some other court to which that court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the court; and upon its receipt by the court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from appeal able decrees or sentences of such former court, or in the case of a civil court from whose decrees no appeal ordinarily lies, to the principal court having ordinary original civil jurisdiction within whose local jurisdiction such civil court is situate:

Provided that-

(a) Where appeals lie to more than one court, the Appellate Court of inferior jurisdiction shall be the court to which such court shall be deemed subordinate;

(b) Where appeals lie to a Civil and to Revenue Court, such court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

5. It is apparent that in order to take cognizance of an offence as enumerated under Section 195 (1) (a) & (b) of Cr. P.C., a complaint in writing of that Court or by such officer of the Court as the Court may authorize, was necessary. A complaint could also be made by a superior court, but the cognizance of offence cannot be taken without a complaint by the court. In order to file a complaint in respect of the offence committed during pendency of the Court proceedings, it is necessary that either the Court should file a complaint under Section 340 Cr. P.C. for trial of the offender for the offences before the appropriate Court and if Court does not file a complaint then the aggrieved person can also file an application under Section 340 Cr. P.C. asking for filing a complaint. However, filing a complaint under Section 340 Cr. P.C. by the Court was a necessary pre-condition for prosecution of the accused

for offences committed under Section 195 Cr. P.C. Section 195 Cr. P.C. and 340 Cr. P.C. are to be read together and the bar under Section 195(1) (3) Cr. P.C. can be removed only in accordance with Section 340 Cr. P.C. For taking cognizance under Section 195 Cr. P.C of the offence, the Court has to consider all the circumstances and then come to a finding whether those circumstances warrant and make it expeditious, in the interest of justice an inquiry by a Magistrate in regular proceedings. It is only upon such a finding that a complaint can be made against such person. Thus the court which was seized with the proceedings must, *prima facie*, be satisfied that the offence, as alleged, has been committed by respondents and the proceedings must be initiated against them. If the Court does not make an order under Section 340 Cr. P.C., a private party cannot lodge an FIR for the offence committed during Court proceedings.

6. I, therefore, consider that the learned ASJ rightly allowed the revision and discharged the accused.

7. I find no force in this petition. The petition is hereby dismissed.

SEPTEMBER 27, 2010
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SHIV NARAYAN DHINGRA, J.