

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. No.774/2011 & CrI.M.As. No.2930-31/2011**

Decided on: 10.03.2011

IN THE MATTER OF
SATISH KUMAR SINGH

..... Petitioner
Through : Mr. Vikrant Sharma, Adv.

versus

STATE GOVT. OF NCT OF DELHI Respondent
Through : Mr. M.N. Dudeja, APP for the State.

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

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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? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 482 Cr.P.C. read with Article 227 of the Constitution of India against the judgment dated 9.11.2010 passed by the learned ASJ in a revision petition preferred by the petitioner against the order dated 31.7.2009, passed by the trial court, by which the petitioner/accused was convicted for the offences punishable under Sections 409/420/120B IPC, on the basis of his voluntarily plea of guilt. The petitioner was sentenced to imprisonment for the period already undergone by him, which was 11 months, for all the offences with concurrent effect. Aggrieved by the aforesaid order, the Institute of

Chartered Accountants of India preferred a revision petition, wherein the learned ASJ vide impugned order dated 09.11.2010 observed that the punishment awarded to the petitioner was too meager and having regard to the gravity of the offences and the fact that Section 409 IPC provides a punishment of life imprisonment or imprisonment for period upto 10 years with fine, it was held that adequate sentence ought to have been awarded to the petitioner, so that the same would have a deterrent effect on the society at large. Taking into consideration the fact that the petitioner had served less than one year of conviction, the order on sentence dated 31.7.2009 was set aside, while remanding the matter back to the trial court for reconsideration on the point of sentence.

2. In the present case, the accused is charged with the offences of leakage of question papers of Common Proficiency Test Examination relating to Chartered Accountant Course conducted by the Institute of Chartered Accountants of India. Apart from the petitioner, there are three other accused persons who pleaded not guilty and claimed trial. However, the petitioner herein pleaded guilty but did not claim trial, as a result of which, the aforesaid order dated 31.7.2009 was passed by the learned ACMM.

3. Counsel for the petitioner states that the learned ASJ has completely ignored the principle that once the petitioner had pleaded guilty and the trial court had awarded sentence, any directions for enhancement of sentence awarded to the petitioner is violative of Article 21 of the Constitution of India, as the trial court has been directed to confine itself on the point of order on sentence due to which the petitioner would not have any opportunity to defend himself against the charge on merits. It is further

stated that the petitioner ought to be given an opportunity to defend himself in accordance with law and only thereafter should an order on sentence be passed with regard to him. In other words, the petitioner seeks a complete remand of both the order on sentence and order of conviction. In support of his submission, he relies on a judgment in the case of Thippeswamy vs. State of Karnataka, reported as **AIR 1983 SC 747**.

4. Counsel for the petitioner also states that the fact that the petitioner pleaded guilty makes his case at par with a case of plea bargaining and since the petitioner pleaded guilty only under the impression that by pleading guilty, the punishment awarded to him would be lighter, the appellate court ought not to have passed the impugned order directing remand of the matter on the point of sentence.

5. Learned APP for the State, who appears on advance copy, opposes the aforesaid petition and submits that the learned ASJ cannot be faulted in arriving at the conclusion that the punishment awarded by the trial court of the period already undergone is extremely light, having regard to the nature of offences involved in the present case, which include Section 409 IPC, which provides punishment upto life imprisonment or imprisonment upto a period of 10 years with fine. He further states that the judgment in the case of Thippeswamy (supra) is not applicable to the facts at hand.

6. Learned APP for the State further states that this is not the first time that the petitioner has been accused of an offence and that in the past also, he has been involved in two other cases, which fact was taken into account by the appellate court while remanding the matter back to the trial court for re-consideration on the point of sentence.

7. This Court has considered the judgment in the case of Thippeswamy (supra), relied upon by the counsel for the petitioner. The aforesaid case is one where the appellant therein had pleaded guilty to the charge in a case, in which subsequently plea bargaining had taken place. He was convicted under Section 304A IPC, but only a sentence of fine of Rs.1,000/- was imposed on him. Aggrieved by the aforesaid order, the State preferred an appeal before the High Court. The High Court maintained the sentence of fine and additionally imposed a substantive sentence of rigorous imprisonment on the appellant therein for a period of one year. Aggrieved by the said order, the appellant approached the Supreme Court. After considering the facts of the case, the Supreme Court held that it was a case of plea bargaining, as a result of which the appellant had not got any opportunity to defend himself against the charge, which is a course, he would certainly not have followed had he known that he would not be let off with a mere sentence of fine, but would also be sentenced to imprisonment. In the above background, it was held that the rights of the appellant therein under Article 21 of the Constitution of India were being violated by the imposition of an additional sentence, as he had been induced to plead guilty under a promise or assurance that he would be let off lightly.

8. The present case is certainly not of plea bargaining. No such assurance was given to the petitioner that if he pleaded guilty, he would be let off lightly. Nothing has been shown on record to establish that the petitioner was extended any assurance that if he would plead guilty, the sentence imposed on him would be minimum possible. He pleaded guilty on his own. In the teeth of the admission of guilt by the petitioner without any

inducement of any kind, the petitioner is not entitled to claim any violation of rights under Article 21 of the Constitution of India, nor could the matter have been remanded back to the trial court for a full fledged trial to take place as claimed. Further, this Court concurs with the opinion expressed by the revision court that the trial court completely overlooked the fact that the petitioner had indulged in the offence of cheating in two other cases, both registered at Rajasthan. So he was not a first time offender to whom such leniency ought to have been shown, as done by the trial court. In view of the aforesaid facts and circumstances, there is no justification for entertaining the present petition, more so by invoking the inherent powers of this Court under Section 482 Cr.P.C.

9. The petition is dismissed, along with the pending applications.

MARCH 10, 2011
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(HIMA KOHLI)
JUDGE