

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

Judgment decided on: July 20, 2011

+ **CRIMINAL M.C. NO. 1736/2008**

KAMLA SINHA & ANR.

....PETITIONERS

Through: Mr. Rakesh Tikku, Sr. Advocate with Mr. Bijender Singh, Advocate.

Versus

PREM PYARA

.....RESPONDENT

Through: Respondent in person with Ms. Uma, Advocate.

WITH

CRIMINAL M.C. NO. 1299/2009

ABDUL NASIR

....PETITIONER

Through: Mr. Manoj Sharma, Advocate.

Versus

.....RESPONDENT

Through: Respondent in person with Ms. Uma, Advocate.

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.(ORAL)

1. Above two petitions are directed against the impugned order of learned M.M. dated 16th April, 2008 as modified vide order dated

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CRIMINAL M.C. NO. 1736/2008 & 1299/2009

28th May, 2008, whereby the respective petitioners have been summoned to undergo trial.

2. Petitioners Kamla Sinha and Mugdha Sinha have been summoned to undergo trial. Operative portion of the summoning order dated 16th April, 2008 as modified vide order dated 28th May, 2008 reads thus:

"I accordingly, direct that accused No. 1 and 2 be summoned under Section 403 in alternative Section 420 or in alternative Section 406, Section 465 or in the alternative Section 468 read with 120B IPC and Section 5 read with Section 25 of the Arms Act for 28.05.2008. I further direct that accused No. 3 be summoned u/S 5 read with Section 25 of the Arms Act for 28.05.2008. I further direct that accused No. 3 be summoned u/S 5 read with Section 25 Arms Act".

3. Learned Sh. Rakesh Tikku, Sr. Advocate appearing for the petitioners Kamla Sinha and Mugdha Sinha submits that impugned order of learned M.M. is liable to be quashed as it has been passed arbitrarily without application of mind to the facts and circumstances of the case. In support of this contention, he has drawn my attention to the order dated 28th May, 2008 of learned M.M. wherein, apart from referring to the complaint and statement of complainant CW1, the Magistrate has referred to certain documents called from Ministry of Home, Government of Rajasthan as well as District Collector. In Para 5 of the order, learned M.M. inter alia records thus:

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"5. From the perusal of the record, it is revealed that in fact that the application for renewal of licence on behalf of the complainant was filed before ADM, Jaipur. This application has two handwritings. One, which according to the complainant is his and second at present is not known in whose handwriting it is. But as per report of handwriting expert the word "sale" as mentioned in the license renewal application is not written in the handwriting of the complainant. I have also seen the record summoned by the court, whereby it is revealed that these arms were sold to the accused No. 3. Considering the entire record before me, I find that the complainant has successfully proved prima facie case for summoning of the accused persons".

Perusal of the above would show that the learned Metropolitan Magistrate, while observing as above, has not identified the documents considered by him nor he has enumerated the contents or gist of contents of those documents which enabled him to form a prima facie opinion as to commission of offence by the petitioners Kamla Sinha and Mugdha Sinha. The impugned order of the learned Magistrate is a non-speaking order and learned Metropolitan Magistrate has left it to the imagination as to how the unidentified documents referred to by him, prima facie, disclosed commission of offence by the petitioners. Learned counsel for the petitioners further submits that reading of the operative part of the impugned order of the learned M.M. noted above would show that the learned M.M. himself was not sure of the offence committed by the petitioners. Learned counsel thus has urged for setting aside of the summoning order.

4. Learned Sh. Manoj Sharma, Advocate appearing for the petitioner Abdul Nasir stated that he has been summoned under Section 5 read with Section 25 of the Arms Act but learned Magistrate has not referred to any averment in the complaint or the statement of the complainant or any other document, which could justify the summoning of the petitioner Abdul Nasir, who, admittedly is a licensed arms dealer under Section 5 read with Section 25 of the Arms Act.

5. On the contrary, it is submitted on behalf of the respondent that a prima facie case is made out against all the petitioners. Learned counsel has submitted that during the course of enquiry, Magistrate had summoned certain documents from Ministry of Home, Government of Rajasthan, Office of the District Collector and DCP (South-West), New Delhi and on perusal of the those documents, learned Magistrate came to the conclusion that a prima facie case for summoning of the petitioners was made out. In support of this contention, respondent has referred to the order of learned Magistrate dated 16th April, 2008 as modified by order dated 28th May, 2008. Thus, respondent has pressed for dismissal of the petitions.

6. I have considered the rival contentions. On perusal of the impugned order dated 16th April, 2008 as also the subsequent order

dated 28th May, 2008, it transpires that learned M.M. has observed that during enquiry, he called for relevant documents from Ministry of Home, Government of Rajasthan as well as concerned District Collector. In Para 5 of both the orders, it is observed that learned M.M. had seen the summoned record, which prima facie discloses the involvement of the accused persons in commission of offence and then, learned M.M. went on to pass the summoning order. Learned M.M. though, he has mentioned about certain record, has not identified the record by making specific reference to the documents which influenced his mind to come to a conclusion about prima facie commission of offence. He has not even reproduced the contents of the documents in verbatim or its gist, which may enable this court to come to a conclusion as to what formed basis for finding of the learned Magistrate. Thus, in my considered view, the impugned summoning order is a non-speaking order which does not give a clue about the basis on which the Magistrate came to the conclusion to summon the accused persons to undergo trial. Impugned order is accordingly set aside. Matter is remanded back with the direction that the Metropolitan Magistrate shall reconsider the matter and, if need be, he would conduct preliminary inquiry expeditiously and pass appropriate orders.

7. The petitions stand disposed of accordingly.

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8. Trial Court record along with the copy of this order be sent back immediately.



(AJIT BHARIHOKE)
JUDGE

JULY 20, 2011

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