

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

Judgment delivered on: July 13, 2011

+ **CRL.M.C. NO. 3224/2009**

**PREM NATH SHARMA**

**....PETITIONER**

Through: Petitioner in person with Mr.  
R.K.Bhardwaj, Advocate.

Versus

**SMT. DARSHANA & OTHERS**

**....RESPONDENTS**

Through: Mr. Ajay Verma, Advocate for  
respondents No. 1 & 2.  
Mr. Sachin Sharma, Advocate for  
respondent No. 3.  
Respondent No. 4 in person.

**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. Prem Nath Sharma, vide this petition, seeks to challenge the order of learned ACMM dated 14<sup>th</sup> May, 2009 in complaint case titled "Prem Nath Sharma Vs. Diwan Chand & Ors." whereby the complaint filed by the petitioner was dismissed as withdrawn and accused persons were acquitted.

2. Briefly stated, the facts relevant for disposal of this petition are that the petitioner filed above noted complaint under Sections 147/148/307/217/269/270/34 IPC read with Section 120B IPC against the respondents and others on 08<sup>th</sup> January, 1990. The preliminary enquiry into the complaint went on till 25<sup>th</sup> March, 2000 when the learned ACMM, after examining as many as 17 witnesses, summoned respondents No. 1 to 4 and Diwan Chand (since expired) & Shaheen Das (since expired) for the offences punishable under Sections 147/148/323 IPC. Learned ACMM also summoned respondent No. 4 Head Constable Prem Singh and Surjeet Lal, Inspector (since expired) under Sections 217 read with Section 34 IPC. On 25<sup>th</sup> January, 2008, learned Magistrate partly examined the complainant and recorded the statement of PW2 Shanti Swaroop Sharma.

3. On 14<sup>th</sup> May, 2009 the petitioner sought to withdraw his complaint claiming that he has compromised the matter with the respondents. Learned ACMM recorded his statement in this regard, which was duly signed by the petitioner. In view of the said statement, learned ACMM allowed the withdrawal of complaint under Section 257 Cr.P.C and acquitted the respondents.

4. Feeling aggrieved by the impugned order dated 14<sup>th</sup> May, 2009, the petitioner has approached this court claiming that the

withdrawal of the complaint is the result of his counsel Mohd. Saleem colluding with the accused persons and he, because of his old age, could not comprehend the import of his statement recorded by the learned ACMM on 14<sup>th</sup> May, 2009, which led to the impugned order acquitting the respondents and others because of withdrawal of the complaint.

5. I have heard learned counsel for the petitioner. Petitioner has also filed written submissions in support of his petition. The plea of the petitioner is that he was never ready and willing to withdraw the complaint on 14<sup>th</sup> May, 2009 and he was pushed into making the statement for withdrawal of complaint on 14<sup>th</sup> May, 2009 by his counsel Mohd. Saleem, who colluded with the accused persons. It is submitted that the petitioner, on 14<sup>th</sup> May, 2009 was aged about 75 years and because of his old age, he was misled into making the statement before the court. It is also submitted that the complaint was filed under various sections of the I.P.C including Section 307. Thus warrant trial case procedure was applicable in this case and Section 257 Cr.P.C, which relates to summons trial cases, was not attracted. Thus, petitioner has urged for setting aside of impugned order.

6. Learned counsels appearing for the respondents submit that there is no infirmity in the order of the learned ACMM dated 14<sup>th</sup>

May, 2009 for the reason that the learned ACMM was cautious enough to record the statement of the petitioner and obtained his signatures on the same. It is submitted that the present petition is nothing but an abuse of process of law to harass the respondents.

7. In order to appreciate the contention of the parties, it would be appropriate to reproduce the relevant portion of the impugned order of learned ACMM dated 14<sup>th</sup> May, 2009:

*“The matter in dispute has been amicable resolved out of the court with the assistance of their respective counsel. Statement of complainant recorded separately. Considered. Perusal of record shows that the present case dates back to the year 1990. The matter is at the stage of pre-charge evidence. Charge is yet to be framed by the court. Keeping view the statement made by the complainant, amicable settlement of dispute between the parties out of the court and considering entirety of the facts and circumstances of the case, complaint filed by the complainant is dismissed as withdrawn. Accused persons are acquitted of the offences alleged to be committed by them. Their bail bond stands discharged. Surety bond cancelled. Original documents be returned to the parties, if any, after cancellation of endorsement on the documents. File be consigned to RR”.*

8. From the record, it also transpires that before passing the impugned order, the learned ACMM recorded the statement of the petitioner Prem Nath Sharma, which reads thus:

*“I am the complainant in the present case. I have amicably settled my dispute with the accused persons. The accused persons have apologized for their mistake and tendered unconditional apology to me. Accused Kalo @ Poonam Sharma and Shani were my neighbours and we had good relations with each other .The matter*

*has been sorted out with the able assistance of my counsel and the advocate for the opposite parties out of the court. I do not want to litigate with the accused persons. I am 76 years old and want to live peacefully and maintain harmonious relationship with the accused persons. I may kindly be permitted to withdraw my complaint dated 8/1/90 for the offences alleged to be committed by the accused persons as mentioned in the complaint."*

9. On perusal of the above, it is obvious that withdrawal of the complaint was permitted on the basis of statement made by the petitioner Prem Nath Sharma, which was duly signed by him. One cannot lose sight of the fact that the petitioner Prem Nath Sharma is a retired police officer as such, he is expected to know criminal law. Section 257 of the Code of Criminal Procedure provides, if the complainant, at any time before the final order is passed in a complaint case pertaining to an offence triable as a summons trial, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against one or more accused, the Magistrate may permit him to withdraw the same and in that eventuality, the Magistrate shall acquit the accused person/s against whom the complaint is so withdrawn. From the summoning order dated 25<sup>th</sup> March, 2000, it is apparent that one set of accused persons were summoned under Sections 147/148/323 IPC and other set of accused persons have been summoned under Section 217 read with Section 34 IPC. The above offences are triable in accordance with the summons trial procedure, therefore, Section

257 CrPC is squarely applicable to this case. From the statement of the petitioner, it is obvious that he voluntarily sought to withdraw his complaint on the ground of amicable settlement with the parties. Therefore, the impugned order of learned ACMM cannot be faulted.

10. The other contention of the petitioner is that since he had been pursuing the complaint diligently for almost two decades, it is not possible that he would have withdrawn the complaint suddenly on 14<sup>th</sup> May, 2009.

11. I am not convinced with the above submission for the reason that the petitioner, in his statement made to the court on 14<sup>th</sup> May, 2009 clearly stated that he had arrived at a settlement with the respondents. Once the settlement was arrived at, the petitioner, under the natural course of events, was expected to withdraw the complaint. Thus, the previous delay in the proceedings cannot be made a ground to permit the petitioner to get out of the statement made to the court.

12. Petitioner, in his written submissions has tried to canvass that he was persuaded and compelled by the learned ACMM to withdraw the aforesaid complaint. This allegation of the petitioner runs counter to his other plea that his counsel colluded with the respondents and did not explain to him as to what was happening in

the court and as a result, he was misled into making a statement for withdrawal of the complaint.

13. In view of the discussion above, I do not find any merit in the petition under Section 482 CrPC. Otherwise also, the offence is alleged to have been committed as early in November, 1989. Therefore, after almost 22 years of alleged offence, it would not be appropriate to reopen the criminal proceedings against the respondents for a minor offence under Section 323 IPC.

14. Petition is accordingly dismissed.

**(AJIT BHARIHOKE)**  
**JUDGE**

**JULY 13, 2011**  
akb