

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

+ **Crl. M.C.No. 2775/2011**

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Reserved on: 21st March, 2012

Decided on: 10th April, 2012

COURT ON ITS OWN MOTION

..... Petitioner

Through:

versus

STATE

..... Respondents

Through: Mr. Dayan Krishnan, ASC for State
with Nikhil Menon, Adv.
Mr. Suresh Jha, Adv. for accused
Prabhakar & Amit Kumar.
Mr. M.L. Yadav, Adv. for accused
Karan.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present reference has been sent by the Learned Additional Sessions Judge in Sessions case No. 32/2011 in FIR No. 188/2009 under Section 307/34 IPC P.S. Paharganj titled as State Vs. Prabhakar & Ors. for rectification of the committal order in terms of the decision of the Hon'ble Supreme Court in *Ranjit Singh Vs. State of Punjab AIR 1998 SC 3148*.

2. As per the order of reference, on 12th July, 2011 the learned Additional Sessions Judge was assigned the case wherein, as per the order of committal, only two accused namely Prabhakar and Amit were committed for trial. From the charge-sheet, it was evident that besides these two accused, one more accused Karan @ Kannu S/o Raj Kumar was also charge-sheeted for commission of the abovementioned offence. However, the learned

committal Court did not summon the said Karan @ Kannu nor recorded any reason for not summoning and committing him. Thus, according to the Learned Additional Sessions Judge, since it can now summon the third accused only by adopting the procedure under Section 319 Cr.P.C., it was a fit case where this Court in exercise of its jurisdiction under Section 482 Cr.PC corrects the illegality committed by the learned Committal Court and issue summons to the third accused Karan @ Kannu.

3. On a notice being issued, a status report has been filed. As per the status report, charge sheet in the abovementioned FIR was submitted in the Court of Learned ACMM, Tis Hazari, Delhi wherein accused Prabhakar, Amit and Karan @ Kannu were charge-sheeted, however, inadvertently Karan @ Kannu was not summoned. The case was committed to the Court of Sessions on 12th July, 2011 and no committal order was passed in respect of Karan @ Kannu.

4. Briefly the facts giving rise to the registration of abovementioned FIR on the statement of Smt. Misreen are that on the night of 7th and 8th August, 2009 around 10.30 PM she was standing outside her jhuggi when she saw that her son Ajay, Karan and Deepak were standing near the ice-cream rehdi to take ice-cream. In the meantime, some boys came, out of whom Amit, Karan @ Kannu, juvenile 'S' were in front and Prabhakar, juvenile 'V' and few other boys were at the back. She saw that Santosh, living in the same area, came on the main road and Karan @ Kannu caught hold of the hand of Santosh and 'S' caught him from front. Amit caught him from the right hand, showed him the knife which he was carrying in his right hand and gave a stab wound to Santosh on his back. Santosh ran towards his jhuggi

when his elder brother Karan S/o Munna Lal asked him what happened and Santosh told him that Amit etc. have given him a stab blow. When Karan ran towards those people, Amit sprang towards Karan S/o Munna Lal and Karan @ Kannu caught hold of the hand of Karan S/o Munna Lal, 'S' caught hold from the back-side and Amit gave a stab knife blow on his stomach from his right hand. Her son Ajay and Deepak started running due to fear. In the meantime Prabhakar and 'V' shouted to catch hold of them so that they do not run away. Karan S/o Munna Lal fell down on the road and when she and other people of the jhuggis started shouting, the boys ran away. On an investigation being conducted, a charge-sheet was filed before the Learned ACMM sending Prabhakar, Amit Kumar, Karan @ Kannu for trial.

5. The Learned ACMM by order dated 5th March, 2011 though summoned Prabhakar and Amit, however did not summon Karan @ Kannu. No reasons were given for disagreeing with the charge-sheet. On 14th July, 2011 an application was filed by the Investigating officer stating that one accused Karan @ Kannu, who had been sent up for trial, has not been committed and thus prayed for rectification of the committal order. Vide order dated 30th July, 2011 the Learned ACMM dismissed the application of the Investigating Officer praying for rectification of the committal order on the ground that the issue regarding defect in the committal order was pending before this Court.

6. Since the right of Karan @ Kannu was likely to be affected by the order passed by this Court, this Court issued notice to Karan @ Kannu. Learned counsel appearing on behalf of Karan @ Kannu stated that there is no illegality in the order. On a perusal of the evidence on record and after

hearing learned counsel for the parties including Karan @ Kannu, I find that vide the order dated 5th March, 2011 the Learned ACMM committed an error in not summoning Karan @ Kannu.

7. In *Ranjit Singh Vs. State of Punjab (1998) 7 SCC 149* their Lordships held:

“21. But then one more question may survive. In a situation where the Sessions Judge notices from the materials produced but before any evidence is taken, that any other person should also have necessarily been made an accused (without which the framing of the charge would be defective or that it might lead to miscarriage of justice), is the Sessions Court completely powerless to deal with such a contingency? One such situation is cited by the learned Judges through an illustration narrated in Kishun Singh's case (*supra*) as follows :

"Where two persons A and B attack and kill X and it is found from the material placed before the Judge that the fatal blow was given by A whereas the blow inflicted by B had fallen on a non-vital part of the body of X. If A is not challaned by the police, the Judge may find it difficult to charge B for the murder of X with the aid of Section 34 IPC. If he cannot summon A, how does he frame the charge against B?"

23. Another instance can be this. All the materials produced by the investigating agency would clearly show the positive involvement of a person who was not shown in the array of accused due to some inadvertence or commission. Should the court wait until evidence is collected to get that person arraigned in the case?

23. Though such situations may arise only in extremely rare cases the Sessions Court is not altogether powerless to deal with such situations to prevent miscarriage of justice. It is then open to the Sessions Court to send a report to the High Court

detailing the situation so that the High Court can in its inherent powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left out accused. But we hasten to add that the said procedure need be resorted to only for rectifying or correcting such grave mistakes.”

8. Thus, the reference is allowed. Order dated 5th March, 2011 passed by learned ACMM summoning the accused Prabhakar and Amit Kumar is modified to the extent that accused Karan @ Kannu is also summoned as an accused to face trial in case FIR No. 188/2009 under Section 307/34 IPC registered at PS Paharganj pending before the Learned Additional Sessions Judge. Karan @ Kannu shall appear before the Additional Sessions Judge on 27th April, 2012 in the above mentioned case. On appearance, the learned Additional Sessions Judge shall supply Karan @ Kannu with the copies of the documents and proceed in accordance with law.

9. Reference is answered accordingly. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

APRIL 10, 2012
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