

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

% Order delivered on: 13th January, 2015

+ **CRL.A. 1064/2014**

ANAND SAGAR Appellant
Through Mr.S.C.Sagar, Adv. along with
appellant in person.

versus

STATE Respondent
Through Mr.Ravi Nayak, APP for the State.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The appellant has filed the present appeal under Section 351 Cr.P.C. against the impugned orders dated 10th July, 2014 and 8th July, 2014 whereby the impugned show-cause notice under Section 350 Cr.P.C. was issued to the appellant in case FIR No.438/13, under Sections 347/354/367/34 IPC and Section 8 of POSCO Act, PS Seelampur, titled as *State vs. Mohd. Zakir @ Sonu*.

2. The prayer in the appeal is made to set-aside the impugned order dated 10th July, 2014 to the extent by which the learned Trial Court has sentenced to fine of Rs.100/- under Section 350 Cr.P.C. deductible from the salary of the appellant. The prayer is also made to set-aside the order dated 8th July, 2014 by which the impugned show-cause notice was issued to the appellant.

3. Brief facts were that originally, the FIR was registered by SI Naveen Kumar and the investigation was being carried out by him. In the bail application, the learned Trial Court issued the notice/summon to the appellant, who is working as SHO in PS Seelampur, Delhi, to appear in person and further directed that an Officer not below the rank of IO to be appeared before Court on 8th July, 2014. The show-cause notice under Section 350 Cr.P.C. was issued, the details of which are already mentioned, against the appellant as he did not appear before the Court. Undisputedly, after issuing the said notice, the appellant forwarded a letter dated 10th July, 2014 to the DCP concerned against SI Naveen Kumar for his misconduct.

4. On 10th July, 2014, reply to the notice was filed before Court wherein it was stated by the appellant that after passing the impugned order dated 8th July, 2014, he asked the Naib Court HC Sukhbir to check from the Court whether his presence was required or not. He told that he had checked and as a matter of fact, some Officer of the rank of IO would appear and the presence of the appellant was not required. Therefore, SI Sarita was directed to appear before Court with the case file. The other reason for his non-appearance given by him was that he was in High Court in a matter for quashing of FIR. With regard to SI Sarita, she replied to him that the IO of the case was SI Naveen Kumar who went on leave but had not submitted the case file in this regard before proceeding on leave. Had she disclosed the said facts to the appellant, he would have

appeared before the Court on 8th July, 2014. It is mentioned that it is the total negligence of SI Naveen Kumar and not the appellant.

5. I have heard the learned counsel for the parties. It appears to me that it is the admitted position that before issuance of show-cause notice under Section 350 Cr.P.C. and pronouncement of judgment dated 10th July, 2014, no reply was called upon from the appellant. Section 350(1) Cr.P.C. clearly states that it applies only to a witness of the case. The appellant was not witness to the said case FIR No.438/13. Even otherwise, it makes mandatory that the learned Trial Court must grant an opportunity of being heard before awarding the sentence of fine. It further makes mandatory under Section 350(2) Cr.P.C. that a witness should be tried summarily to follow the procedure practicably prescribed for summary trial.

6. It has been held in ***Ravinder Kumar Tyagi vs. State***, vide W.P. (Crl.) No.264/11 decided on 1st August, 2012 by the Division Bench of this Court that an opportunity of being heard should be granted to the aggrieved person before passing the impugned order, failing which it shall be bad in law. In the said judgment, the case of ***State of Madhya Pradesh v.Narmada Bachao Andolan and Anr.*** (2011) 12 SCC 689 has been referred, the relevant para whereof reads as under:-

“15. Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that have been

made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.”

7. Under the similar circumstances, the rule of law held in **C. Mc. Lennan & Anr. vs. The State**, AIR 1968 Calcutta 195 and **State of M.P. vs. Kashyap**, 1962(2) Cri. Law Journal 680 held that failure of granting an opportunity of being heard, the order issued under Section 350 Cr.P.C. shall be vitiated and bad in law.

8. In the present case, the appellant in his reply dated 10th July, 2014 had assured the Court that extra precaution would be taken in respect of Court matters, as he has again warned all the IOs of his police station to be careful in future. However, despite of that, the learned Trial Court has passed the order imposing a fine of Rs.100/- to be deducted from the salary of the appellant. There is a force in the submission of the appellant that he was pre-occupied with other administrative work and his non-appearance before the Court on 8th July, 2014 was actually a communication gap between the Officers.

9. In view of the peculiar circumstances of the case and the settled law on this aspect, this Court is of the view that the show-cause notice issued by the Court by order dated 8th July, 2014 is not sustainable. Thus, the impugned orders dated 8th July, 2014 and 10th July, 2014 are set-aside.

(MANMOHAN SINGH)
JUDGE

JANUARY 13, 2014