

\$~33

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.M.C. 3979/2014 & CrI.M.A. No.13655/2014

Date of Decision: 27th April, 2016

DELHI POLLUTION CONTROL COMMITTEE Petitioner

Through: Mr. Sanjeev Ralli, Advocate

versus

KHAZAN SINGH & ANR

..... Respondent

Through: Mr. Ritesh Kumar Bahri, Mr. Randeep
Kumar Rehan, Mr. Ashwani Sharma,
Advocates

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

P.S.TEJI, J

1. The present petition has been filed by the petitioner under Section 482 of Code of Criminal Procedure, against the order dated 25th March, 2014 passed by learned District & Sessions Judge, North-East District, Karkardooma Courts, Delhi in Criminal Revision No.70/2013.

2. The facts giving rise to the present petition are within the narrow compass and to the extent necessary, have been noted hereinafter. The petitioner/ Delhi Pollution Control Committee, carried out an inspection at the shop of respondent no.1/Khazan Singh on 9th September, 2009 with

the Inspecting team which was led by Mr.A.K. Sharma, the then SDM, Seelampur and during inspection, the petitioner found prohibited polythene carry bags (Plastic bags) in the premises i.e. Sharda Gift Collection, of respondent no.1. It was also found that the accused/respondent no.1 was found using as well as storing polythene/plastic bags in the premises, thereby wilfully violating the notification dated 7th January, 2009 issued by the Lieutenant Governor of National Capital Territory of Delhi. Mr.A.K. Sharma, the then SDM, Seelampur took the samples of the polythene carry bags/plastic bags and sealed the same for production in Court. A seizure memo and inspection report was also prepared on 9th September, 2009.

3. The respondent was summoned by the Trial Court and pre-charge evidence was commenced. The statement of CW-3/Shri A.K. Sharma who was the SDM, was recorded in which he stated that he dictated Mr.Jayanand who, as per his dictation, prepared the seizure memo and inspection report in his handwriting and then signed the same. CW-3/Shri A.K. Sharma also deposed that prohibited polythene carry bags/plastic bags were weighed by Mr.Jayanand in his presence.

4. Learned counsel for the respondents has contended that since the seizure memo and inspection report were prepared by Mr.Jayanand in his handwriting on the dictation of the then SDM, Seelampur, an application under Section 311 Code of Criminal Procedure was filed by the petitioner

on the ground that the name of Mr.Jayanand should have been considered as prosecution witness and he should have been summoned. The name of Mr.Jayanand was not mentioned in the list of witnesses filed with the complaint.

5. The application under Section 311 Code of Criminal Procedure preferred by the petitioner for summoning Mr.Jayanand, was allowed by the Trial Court vide order dated 11th July, 2013. Pursuant to the said order, CW-4/Jayanand was summoned and examined on 6th September, 2013, however his cross-examination was deferred time and again on the request of the counsel for the respondents. After seeking adjournment to cross-examine CW-4 on 6th September, 2013, the respondent no.1 preferred Criminal Revision Petition against the order dated 11th July, 2013 passed by the learned Trial Court.

10. Learned counsel for the petitioner relies on Section 244 of the Code of Criminal Procedure which reads thus:

“Evidence for prosecution

1. When, in any warrant-case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.
2. The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.”

7. In support of his contention, learned counsel for the petitioner has placed reliance on the pronouncement of this Court in ***Niadar Singh v. Maman & Ors. 89 (2001) DLT 563.***

8. I have heard learned counsel for the parties at length and gone through the available records as well as the judgment cited by learned counsel for the petitioner. The learned Sessions Judge, vide order dated 25th March, 2014, allowed the revision petition and set aside the order dated 11th July, 2013 passed by the learned ACMM (Spl. Acts)/Central, Delhi vide which the application under Section 311 Cr.P.C. was allowed for summoning CW- 4/Jayanand.

9. Vide order dated 25th March, 2014, the learned District & Sessions Judge set aside the order dated 11th July, 2013 passed by the learned ACMM, on the ground that where prosecution witness was confronted with a peculiar situation on the facts then examination of a person as a witness was not an essentiality for Court for just decision but rather it would be an opportunity for party to explain a situation which came on record in the cross-examination of the witness. It was further held by learned District & Sessions Judge that the Trial Court failed to appreciate the fact that examination of witness Jayanand was not essential for just decision of the case but rather it was only for finding a suitable

explanation to a situation which appeared during cross-examination of PW 3 and that examination of Jayanand would be entirely to the prejudice of the accused.

It transpires from the record that in the revision petition preferred by the revisionist, the ground taken for setting aside the order dated 11th July, 2013 was that examination of witness Jayanand would give the prosecution a misplaced advantage when witness was confronted with a situation and witness came forward as a person who had conducted some acts. It was further contended by the revisionist that in view of the testimony of CW-2/Bhopal Singh to the effect that the team comprised only the witness, Kehar Singh "Beldar" and the then SDM and that the polythene bags had been weighed inside the shop by the then SDM and seizure memo was prepared by him, the examination of Jayanand would amount to allowing prosecution an opportunity to fill in lacuna and impugned order thereby suffers illegality and impropriety.

12. Consequently, I do not find this case a fit case where power as conferred under Section 482 Code of Criminal Procedure, can be exercised. Allowing Jayanand to be summoned and cross-examined by the accused would lead to just prolonging the trial as no purpose would be served by the same. Jayanand did as per the direction of Mr.A.K. Sharma, the then SDM, Seelampur who had authority to take a decision on his own and whether that decision was rightly taken or not, is the

subject matter of trial.

13. The present petition and application are, therefore, dismissed.

(P.S.TEJI)
JUDGE

APRIL 27th, 2016
aa