

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

% Decided on: 29th November, 2017

+ **CRL.A. 905/2016 & CrI.M.B. 1729/2016**

SHITANSHU SHARMA

..... Appellant

Represented by: Mr. Narender Mann, Spl. PP
with Mr. Manoj Pant, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Hirein Sharma, APP for
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Challenging his conviction under Section 350 of the Code of Criminal Procedure (in short Cr.P.C.) and sentencing him to pay a fine of ₹100/- by the impugned order dated 12th February, 2016 the appellant prefers the present appeal under Section 351 Cr.P.C.

2. The impugned order dated 12th February, 2016 reads as under:

"12.02.2016

Present: Shri Praneet Sharma, Ld. Sr. PP for the CBI.

Holding IO Inspector Shitanshu Sharma, in person.

Accused on bail with Sh. Harsh Sharma, Advocate.

PW-53 Sh. H. Rajesh is examined and discharged. No other PW is present.

Summons of PW John V. George received back unserved with the report that the witness is not traceable.

Holding IO Inspector Shitanshu Sharma has filed his reply to the show cause notice, u/s 350 Cr.P.C., wherein, it has been reported that the death verification report of the witness N.V. Rao was submitted to this Court on 18.01.2016 and since the notice has not mentioned that he was required to appear before the Court in person, so he had not appeared before the court on 18.01.2016.

The oral submissions of the Ld. Sr. PP for the CBI and the Holding IO Inspector Shitanshu Sharma are also heard.

Perusal of the record shows that vide orders dated 18.12.2015, the Holding IO was directed to verify the death of PW N.V. Rao and to report on the next date of hearing on 18.01.2016. Vide said orders, it was further directed that the concerned IO, as well as the Holding IO shall also be summoned for 18.01.2016, through the concerned SSP. The perusal of the notice issued to the Holding IO, Inspector Shitanshu Sharma, for 18.01.2016 also indicates that he was directed to verify the death of the witness N.V. Rao and to submit the verification report before the court on 18.01.2016 at 10.00 a.m.

Perusal of the record further shows that on the notice issued to the Holding IO Inspector Shitanshu Sharma, it has been duly reported by SI Zile Singh, the Incharge of the Summons Cell, CBI, that notice has been duly served upon the Holding IO Inspector Shitanshu Sharma, on 06.01.2016.

All these circumstances and the orders passed by this Court on 18.12.2015 and 18.01.2016 and the service report, clearly indicate that the Holding IO Inspector Shitanshu Sharma was required to appear before this Court in person, along with the death verification report of PW N.V. Rao. But, Holding IO Inspector Shitanshu Sharma has deliberately and willfully not appeared before this Court on 18.01.2016, in compliance of the order dated 18.12.2015 & has intentionally neglected to appear before the court on 18.01.2016, without any reasonable or just cause or excuse and has therefore, committed the offence u/s 350 Cr.P.C., and he is accordingly, tried summarily, for the said offence.

The submissions made by the Holding IO Inspector Shitanshu Sharma in his written reply to the show-cause notice u/s 350 Cr.P.C., appears to be an afterthought and therefore, his submissions are hereby rejected. Accordingly, he is hereby convicted under Section 350 Cr.P.C., and is sentenced to pay a fine of ₹100/-. The fine of ₹100/- shall be deducted from his salary by the concerned Joint Director, CBI, New Delhi and the same shall be deposited in the court on or before the next date of hearing.

A copy of this order be sent to the Joint Director, CBI concerned for information and necessary compliance.

Adjourned for remaining P.E. on 03.03.2016 & 04.03.2016.

Holding IO Inspector Shitanshu Sharma is bound down for the said dates.”

3. A perusal of the record reveals that though the order dated 18th December, 2015 summoned the appellant, however the notice sent from the Court through the concerned SSP to the holding I.O., CBI/ACB/DLI, New Delhi i.e. Shitanshu Sharma directed him to verify the death of witness Shri N.V. Rao, Accounts Manager, Prentice Hall of India Pvt. Ltd. 474/6, Patparganj Industrial Area, Delhi and the verification be submitted before the Court on 18th January, 2015 at 10 O'clock. Since the notice received by the appellant did not record the requirement of his personal appearance in the Court, the conviction of appellant under Section 350 Cr.P.C. and imposition of fine of ₹100/- is unwarranted and is thus set aside.

4. Appeal and application are accordingly disposed of.

(MUKTA GUPTA)
JUDGE

NOVEMBER 29, 2017 /‘ga’