
Bhushan Kumar and Another Vs State and Another

Criminal M.C. No. 3376 of 2009 and C.M. Application No. 11398 of 2009

Court: Delhi High Court

Date of Decision: July 30, 2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 482#Penal Code, 1860 (IPC) â€” Section 420

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: Mohit Mathur, Shishir Mathur Ritesh Thusu, N.K. Bhardwaj and Sanjay Chauhan, for the Appellant; O.P. Saxena, APP for Inspector Mohinder Singh and Vijay Aggarwal, for R-2, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.

This petition has been filed by the petitioners for setting aside order dated 16th January, 2009 passed by the

court of learned Metropolitan Magistrate and to quash the proceedings initiated therein under F.I.R. No. 290 of 2002 registered u/s 420 IPC at

Police Station Okhla Industrial Area. The order dated 16th January, 2009 shows that after receiving charge sheet in case F.I.R. No. 290 of 2002,

the court took cognizance of the offence and directed for summoning the accused through Investigating Officer for 20th July, 2009. Quashing is

sought on the ground that the F.I.R. and the proceedings initiated there under was a gross misuse of the criminal justice system and learned trial

court committed an error in law in not summoning the offending company named in the F.I.R. and issuing process against the directors. It is

submitted that there was no mensrea, that is, intention to deceive and the learned Metropolitan Magistrate by a non-speaking order summoned the

petitioners.

2. I consider that the present petition is a gross misuse of Section 482 Cr.P.C. At the time of taking cognizance of the offence, the trial court is not

supposed to give reasons for taking cognizance. The offences for which the cognizance was taken by the trial court in this case are warrant trial

offences and soon after taking cognizance, the process of hearing accused on charge is to be adopted by the trial court. It is at that stage that the

trial court has to consider whether a charge was made out against the accused and he is to be put to trial or not. At the stage of framing charge, the

trial court is supposed to hear the accused and take into account the charge sheet and other evidence collected by prosecution and pass a

speaking order as to why he considered that the accused was to be put to trial.

3. I, therefore, consider that the present petition was not maintainable and the accused should have argued on charge before the trial court.

4. The petition is hereby dismissed.