

(2006) 07 DEL CK 0150

Delhi High Court

Case No: Criminal Rev. P. 699 of 2004

Roop Ram Sakhiya

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 6, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 209

Citation: (2006) 131 DLT 610 : (2006) 90 DRJ 439

Hon'ble Judges: Badar Durrez Ahmed, J

Bench: Single Bench

Advocate: S.P. Singh Choudhary, Y.R. Sharma and J.M. Chauhan, for the Appellant; Pawan Sharma, for the Respondent

Final Decision: Allowed

Judgement

Badar Durrez Ahmed, J.

This revision petition is filed against the order on charge dated 21.9.2004 as well as the formal charge framed on the same day against the petitioner by the learned Metropolitan Magistrate.

2. This case has a chequered history inasmuch as it has apparently been tied up with another case emanating from FIR 107/87 of Police Station Greater Kailash which is essentially a murder case. The present case pertains to certain documentations connected with the person who was murdered in the other case. The case of the prosecution is that the petitioner is involved in a conspiracy and alleged forgery and fabrication of the Will of the deceased in the other case i.e., FIR No. 107/87.

3. On 26.2.2002 when this matter came up before the learned Metropolitan Magistrate, it was argued on behalf of the State that this case also be sent to the Sessions Court along with the case bearing FIR No. 107/87 which had been committed to the Court of Sessions as the present case allegedly constituted part of the same transactions. This course of action was objected to by the counsel for the

petitioner inasmuch as it was contended that it would cause prejudice to the defense of the accused. However, the learned Metropolitan Magistrate was of the view that the present case, being part of the same transactions of the case bearing FIR No. 107/87 which had been committed to the Court of Sessions, also required to be sent to the Court of Sessions along with the case file bearing FIR No. 107/87.

4. Thereafter, the matter was taken up by the learned Sessions Judge and an order was passed on 07.02.2004. It is pointed out by the learned Counsel for the petitioner even before the learned Additional Sessions Judge that the Sessions court had no jurisdiction to take up the case of the present petitioner inasmuch as there was no committal order u/s 209 of the Code of Criminal Procedure, 1973 and, in point of fact, there could be none because the same was not exclusively triable by the Sessions court. But, the learned Additional Sessions Judge went on to pass an order on charge on 07.02.2004, inter alia, against the present petitioner without mentioning any of the provisions under which a prima facie case was said to have been made out against the present petitioner. However, no formal charges were framed by the Sessions Court.

5. Subsequent to this order, there is another order passed by a successor learned Additional Sessions Judge on 06.08.2004 wherein an application moved on behalf of the petitioner was taken up for consideration. The main contention raised in the application was that all the offences emanating from the present FIR (FIR No. 380/2001) were triable by the court of the Metropolitan Magistrate. Furthermore, there was no committal order in respect of the present case enabling the Sessions court to conduct the trial of the present case. The learned Additional Sessions Judge, by virtue of the order dated 06.08.2004, observed that the order dated 26.02.2002 referred to above was not an order of committal as provided u/s 209 Cr.P.C. and that the court of Sessions cannot try any case without the same being committed to it and that too where all the offences are triable by the Metropolitan Magistrate. It was also observed that in the case of offences, triable by the Metropolitan Magistrate there could, in fact, be no committal. The learned Additional Sessions Judge by his order dated 6.8.2004 clearly indicated that the present case had not been committed to the Sessions and that mere pendency of another matter which is triable by the Sessions Court is no excuse for sending these files to the court of sessions. Accordingly, holding that all the offences mentioning in respect of the present case were triable by the learned Metropolitan magistrate, the learned Additional Sessions Judge directed that the files be put up before the learned ACMM for appropriate allocation. The matter was taken up by the Metropolitan Magistrate after allocation on 21.9.2004 when an order on charge was passed and the formal charge was also drawn up.

6. The petitioner is aggrieved by these two orders essentially on the ground that the Metropolitan Magistrate while framing the charges has been influenced by the order passed on 7.2.2004 by the learned Additional Sessions Judge and it is on the

basis of the said order that the impugned orders have been passed. According to the learned Counsel for the petitioner, the order dated 7.2.2004 was without jurisdiction and, Therefore, could not be relied upon. This position had been made clear by the order passed by the successor Additional Sessions Judge on 6.8.2004.

7. I have heard the counsel for the parties and am of the view that the order dated 7.2.2004 was, as indicated by the learned Counsel for the petitioner, without jurisdiction. Accordingly, the impugned orders which are based and founded entirely upon the said order dated 7.2.2004 would also have to be set aside. Hence, this revision petitioner is allowed by setting aside the impugned orders dated 21.9.2004. The matter is remitted to the Metropolitan Magistrate to hear arguments afresh on charge and to pass orders in accordance with law without being influenced by any observation contained in the aforesaid order dated 7.2.2004.

This revision petition is accordingly disposed of.