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**(2007) 03 DEL CK 0010**

**In the Delhi High Court**

**Case No :** Criminal M.C. 1931, 1932, 1933 and 1934 of 2005

Amit Sharma and Others

APPELLANT

Vs

State NCT of Delhi

RESPONDENT

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**Date of Decision :** 22-03-2007

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 34, 365, 479, 506

**Citation :** (2007) 96 DRJ 529

**Hon'ble Judges :** S. Ravindra Bhat, J

**Bench :** Single Bench

**Advocate :** Arjun Bhandari, for the Appellant;

**Final Decision :** Allowed

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## **Judgement**

S. Ravindra Bhat, J.—The petitioners are aggrieved by the summoning order issued upon an FIR lodged by one Deepak, alleging commission of offences u/s 365/479/506/34 IPC.

2. The facts necessary to decide this case are that one Dharamraj had purchased an Ambassador car after availing of financing facilities on hire-purchase basis; from an institution financing vehicle purchase, M/s Muthoot Leasing & Finance Co. Ltd. Apparently, the purchaser used to deposit the installments and at same point in time Shri Kanwar Singh Tanwar, an MLA took fancy to the vehicle and with the consent of the purchaser kept it with himself. The installments fell due and on account on non-payment, the financier authorized the re-possession of the vehicle.

3. At the time of repossession/taking back the vehicle on account of failure to pay the installments, the driver, one Deepak alleged that he was beaten up and also confined by four boys. The FIR was lodged and the matter was investigated. This eventually led to final report recommending that no evidence existed for action against staff of M/s Muthoot Leasing & Finance Co. Ltd, the employer of the petitioners in this case.

4. The relevant part of the cancellation report submitted by the police reads as follows:

From the investigation till date, it has been learnt that M/s. Muthoot Leasing and Finance Ltd. had financed one Ambassador Car bearing registration No. DL-3S/U/1111 to the aforesaid Dharam Raj but upon failure of the complainant Dharam Raj to pay the installments in time, the aforesaid company had repossessed the said vehicle; that the said vehicle was being used by Shri Karan Singh Tanwar and in this connection, Shri Karan Singh Tanwar had made all out efforts to get back the said vehicle from the aforesaid Finance Company but upon failure to pay the due installments and to show the relevant ownership documents, Shri Karan Singh Tanwar was not successful in getting back the possession of said vehicle. As a result of this, a case had been registered in the police station by Shri Karan Singh Tanwar on the basis of statement of his driver Deepak Kumar. In the case, despite all out efforts, no fact in support of the allegations made in the case could be brought out nor had the complainant or anyone else produced any evidence to corroborate the incident reported. Therefore, final report for cancellation of the case has been prepared and is being filed for closing the case. Report about such closure is being given to the complainant through telephone. Orders for sending the file to record room be kindly granted. No evidence has come forth for arrest or action against staff of M/s. Muthoot Leasing & Finance Co. or Mayur Consultants, Therefore, no persons accused in the case had been arrested.

5. It is urged by Mr. Arjun Bhandari, learned Counsel that the summoning order is bereft of reasoning and also application of mind because the Court overlooked that neither the complaint/FIR nor the result of investigations had implicated the petitioners or anyone from M/s Muthoot Leasing and Finance Co. Ltd. He took me through the final report as well as the letter dated 03.02.01 whereby it had authorized its agent Mayur Consultants to repossess the vehicle. Counsel in addition relied upon the statement of the police that M/s Muthoot Leasing & Finance Co. Ltd had authorized Mayur Consultants to repossess and recover the vehicle on 08.02.01. The said Mayur Consultants delivered the car. In these circumstances, it was contended that the petitioners could not have been issued the summoning order, having been named nowhere in the proceedings. If the Court was of the opinion that on the basis of statement of Deepak, some persons had to be summoned, he ought to have indicated expressly as of their identity and not mechanically issued the order.

6. After considering the materials on record shown during the course of the proceedings, the summoning order cannot be sustained. The cancellation report, nowhere mentions the role of any of the petitioners. In two places there is an express mention that M/s Muthoot Leasing & Finance Co. Ltd had authorized Mayur Consultants to repossess the vehicle. In these circumstances, if the Magistrate was of the opinion that despite the police report there should be some materials to proceed further u/s 190(c), he undoubtedly had the power to do so,

but he ought to have clearly indicated as to who has been named as culprits. The materials on record, however, do not justify the summoning of the petitioners.

7. In view of the above discussion, the petitioners are entitled to succeed. The summoning order is hereby set aside. The matter is remitted for fresh consideration and issuance of suitable order on the basis of the materials available on record in accordance with law.

The petition is allowed in the above terms.