
(2010) 07 DEL CK 0265
In the Delhi High Court
Case No : Criminal M.C. 851 of 2007

Anil Saxena

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 464, 467, 468, 471

Citation : (2011) 1 AD 445 : (2010) 7 RCR(Criminal) 1471

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : S.D. Singh, Anurag Kishore and Abhinav Shrivastava, for the Appellant;

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—In spite of the second call none has appeared on behalf of the Respondent No 2, Mr. S.S. Kulkarni.

2. Respondent No. 2 herein is an accused facing prosecution in the charge sheet filed in FIR No. 479/1999 dated 22/11/1999. The Petitioner herein Mr. Anil Saxena has been shown in column No. 2 in the said charge sheet as a person who has not been sent to trial. In the charge sheet , it is stated that the Petitioner and Respondent No. 2 had been opened a new bank account in the name of the partnership firm M/s Millinium Education Consultants and had deposited a banker"s cheque of Rs. 45 lakh drawn by the Indian Overseas Bank on 15.11.1999. This instrument was found to be forged and not issued by the said bank.

3. As per the charge sheet, the said offence was committed by Mr. S.S. Kulkarni. Mr. S.S. Kulkarni was summoned and thereafter charge was framed against him by the learned trial court. While arguing on the point of charge, Mr. S.S. Kulkarni had submitted that cognizance of the offence should be taken against Mr. Anil Saxena or further investigation should be directed against him. The said

argument was rejected by the learned trial court in its order dated 05.08.2002. Charges were directed to be framed under Sections 420/464/467/468/471 of Indian Penal Code against Mr. S.S. Kulkarni.

4. Mr. S.S. Kulkarni filed a Revision Petition against the said order before the Additional Sessions Judge for summoning Mr. Anil Saxena. He did not make Mr. Anil Saxena a party to the said revision petition. By order dated 24.05.2006, the revision petition has been allowed and the order dated 05.08.2002 has been partly set aside with the direction that the Metropolitan Magistrate should proceed with the matter after taking cognizance against Mr. Anil Saxena.

5. The impugned order dated 24.05.2006 cannot be sustained as the same was passed without impleading and hearing Anil Saxena. It is correct that normally an order taking cognizance does not require or mandate notice to the person who has been arrayed as accused. However, the facts of the present case are peculiar. Mr. S.S. Kulkarni who has been arrayed as an accused had filed a revision with a prayer that cognizance should be taken and Mr. Anil Saxena should also be summoned. In these circumstances, I feel that Mr. Anil Saxena should have been impleaded as a party to the revision petition and should have been heard before any adverse order was passed.

6. The counsel for the Petitioner Mr. Anil Saxena has raised a number of contentions. It will be open to the Petitioner to raise all contentions before the Learned Sessions Judge. This Court has not expressed any opinion on merits of these contentions.

7. The impugned order dated 24.05.2006 passed by the learned Additional Sessions Judge in Criminal Revisions No. 1/2005 titled S.S. Kulkarni v. State is set aside and the present petition is allowed. The matter is remanded back to the Additional Sessions Judge for a fresh decision. The Petitioner will appear before the Judge-in-Charge, Patiala House Court on 09.08.2010. If required, notice will be issued to S.S. Kulkarni also. That record will be sent back immediately.