

**(1999) 02 DEL CK 0008**  
**In the Delhi High Court**  
**Case No : Criminal M. (M) No. 788/95**

Ashok Kaushik

APPELLANT

Vs

State

RESPONDENT

**Date of Decision :** 19-02-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 294, 311, 482, 91

**Citation :** (1999) 2 AD 639 : (1999) 78 DLT 423 : (1999) 49 DRJ 202 : (1999) 3 RCR(Criminal) 595

**Hon'ble Judges :** J.B. Goel, J

**Bench :** Single Bench

**Advocate :** Mr. D.C. Mathur and Ms. Rebecca M. John, for the Appellant; Mr. B.T. Singh, for the Respondent

## Judgement

J.B. Goel, J.—In this petition u/s 482 of the Code of Criminal Procedure (for short "the Code") and Articles 226 and 227 of the Constitution of India, the petitioner challenges the legality and correctness of the two orders, one dated 1.2.1994 taking cognizance of the offence against the petitioner and the other dated 21.2.95, passed by the learned Metropolitan Magistrate (M.M.) (case FIR No. 516/92, P.S. Malviya Nagar, New Delhi) whereby the petitioner's applications u/s 294 read with Section 311 of the Code have been dismissed.

2. A prayer has also been made that in the facts and circumstances of the case the proceedings arising of the FIR are liable to be quashed against the petitioner.

3. Briefly, the facts giving rise to the present case are that one Smt. Sushila Wadhwa (now deceased) was the owner of property bearing No. E-1/16, alviya Nagar, New Delhi, formerly a single storeyed house. She had sent a complaint dated 2.10.92 to the Commissioner of Police and others on which FIR No. 516/92 was registered at Police Station Malviya Nagar, New Delhi on 2.11.1992 under Sections 420/468/471/342/165-B;IPC and after completing investigation a report u/s 173 of the Code was submitted to the effect that a case for offences under

Sections 420/468/471/342 IPC is made out against Hardeep Singh (A-1), Raj Kumar Sharma (A-2) who were challaned, and Ashok Kaushik, Padam Singh, Ram Sarup and Nikhilesh Kumar Sharma @ Tara were shown in Column 2.

4. Ram Sarup and Padam Singh had not been arrested whereas the petitioner was on interim anticipatory bail under the order of this Court. A supplementary challan was filed against him, cognizance of which was taken on 1.2.1994.

5. In the aforesaid complaint dated 2.10.92 it is alleged that the aforesaid property was a single storey house and that the complainant Smt. Sushila Wadhwa had entered into an agreement with Hardeep Singh (A-1) in December, 1990 for raising construction of basement, ground floor, first floor and second floor whereby the complainant was to get ground floor, first floor and roof of second floor and Rs. two lakhs in cash whereas Hardeep Singh would get basement, first floor and second floor. Shri Hardeep Singh had occupied his aforesaid portions but has not paid the amount of Rs. 2 lakhs as agreed. It is then alleged that Nikhilesh Kumar Sharma @ Tara, Ashok Kaushik and Padam Singh had colluded with each other and forcibly obtained her signatures on blank papers under threat to kill her and also got executed general power of attorney and a Will both dated 28.5.1992 in favor of Nikhilesh Kumar Sharma. These documents were also got registered with the Sub-Registrar by them in her absence and when she came to know about it in September, 1992 through her tenant Hardeep Singh she submitted cancellation deed; that she had agreed to sell first floor to Hardeep Singh and Nikhilesh Kumar and Ashok Kaushik were pressing Hardeep Singh to purchase it from them, that Nikhilesh Kumar and Ashok Kaushik Along with 3 other persons had abducted her in June, 1992, took forcible possession of ground floor and kept her in a house in Mehrauli for 3/4 days where from she was rescued by the police on 21.6.92 after Suresh Bhatia, husband of her niece had lodged a report with police on 19.6.92; she further alleged that Nikhilesh Kumar and Ashok Kaushik had agreed to pay a sum of Rs. 7.5 lakhs as consideration of ground floor and had got executed a deed for sale; out of this amount Rs. 5 lakhs were deposited by them in her savings account with Punjab National Bank, Malviya Nagar, New Delhi and had promised to pay balance amount of Rs. 2.5 lakhs which was promised to be paid within 45 days had not been paid to her.

6. Before consideration of the framing of charge the petitioner moved an application on or about 22.3.94 under Sections 91 and 155(3) Evidence Act for summoning of certain documents relating to the inquiry/investigation made earlier by ASI Ramesh Dixit on the report of Suresh Bhatia. Copies of those documents perhaps were supplied to the petitioner and then he filed another application dated 30.8.1994 u/s 294 of the Code read with Section 157 and 145 of the Evidence Act for summoning said Suresh Bhatia, and J.K. Ahuja, brother of the deceased complainant to admit/deny their statements made on 21.6.1992 and 24.6.1992 and the affidavit dated 24.6.1992 of deceased complainant. Yet another similar application dated 11.1.1995 was filed for summoning four

persons, namely, Suresh Bhatia, J.K. Ahuja, Ramesh Bhatia and ASI Ramesh Chand Dixit to examine them. These applications have been rejected by the learned M.M. on 21.2.1995 holding that the examination of these witnesses prior to framing of the charge would not serve the ends of justice.

7. I have heard learned counsel for the petitioner. Learned Senior Counsel for the petitioner has contended that the FIR/complaint can be dismissed/quashed if no case is made out or its continuance will amount to misuse of the process of the Court causing unnecessary harassment to the accused; that the Court is competent and rather should exercise power under Sections 91 and 294 of the Code where production of document or examination of witness(s), is necessary to show that no charge could be framed in the facts and circumstances if such documents or statements of witnesses sought to be examined are considered.

8. Section 91 of the Code empowers the Court to summon a person in whose possession or power a document is believed to be, requiring him to produce it where the production of such document is necessary or desirable for the purposes of any inquiry, trial or other proceedings under this Code.

9. And u/s 311 of the Code the court can even summon any person as witnesses, at any stage of inquiry or trial or the proceedings if his evidence appears to it to be essential to the just decision of the case.

10. This power can be exercised even before framing the charge and the evidence so produced may be taken into consideration for the purpose of deciding whether a charge should or should not be framed against the accused. Ranjit Kumar Vs. State, and Ashok Kumar Vs. State (1973) 1 Delhi 822 .

11. Copies of documents sought to be proved have been filed by the petitioner. These are :-

1. Report dated 19.6.1992 of Suresh Bhatia submitted at police station about disappearance of Smt. Sushila Wadhwa (complainant) from her house E-1/16, Malviya Nagar, New Delhi with her baggage with 4-5 boys.

2. Copy of signed statement dated 21.6.92 made by Smt. Sushila Wadhwa (complainant) recorded by ASI Ramesh Chand Dixit at the police station.

3. Copy of affidavit of Smt. Sushila Wadhwa (complainant) handed over at P.S. Malviya Nagar on 24.6.1992 which was attested as witnesses by Suresh Bhatia and J.K. Ahuja.

4. Copy of signed statements made by Suresh Bhatia, Ramesh Kumar Bhatia and J.K. Ahuja on 24.6.1992 to ASI Ramesh Chand Dixit.

12. The report made by Sh. Suresh Bhatia, on translation reads as under :-

"It is submitted that today I received information that my wife's father's sister, i.e., "Bhuua", Smt. Sushila Wadhwa, who resided at E/1/16, Malviya Nagar, New Delhi, was leaving for some place with all her belongings accompanied by four or

five boys who were taking out her belongings from inside the house because she herself is not in a position to move about properly. She is aged about 50 years and is bent from waist to her knees. She is residing alone in this house. She has two daughters, one residing in Bhopal and the other in Mathura. In her building some persons are residing in one or two floors. On the floor where she resides, some other person was dwelling therein today. On enquiries from them about her whereabouts, they in turn told that they did not know anything in that respect and did not give any satisfactory reply. Therefore, it is requested that investigation be made as to who had taken her away from there.

Sd/-

in Hindi

Suresh Kumar

Factory Phone No. 7243124

F-I-U-88, Pritampura, Delhi."

13. The statement made on 21.6.92 by Smt. Sushila Wadhwa, complainant to the ASI Ramesh Dixit on translation reads as under :-

"I, Smt. Sushila Wadhwa wife of Shri Balkishan Wadhwa R/o Ward No. 3-458/B.5-13, Mahrauli, swear in the name of God and state that I have sold my house E/1/16, Malviya Nagar, New Delhi, G/F(Ground Floor), of my own free will and for meeting my financial needs, to Shri Ashok Kaushik, R/o Jia Sarai, New Delhi. Necessary documents, such as, agreement, power of attorney etc. have been executed and after executing the same, consent too has been given. I have, after vacating this house of my own free volition, handed over its possession peacefully to Shri Ashok Kaushik in the morning of 6.1992 and I have no complaint/grouse against Ashok ji and I am residing in this house of my son-in-law's nephew, Padam Singh, on rent of my own volition. My wish is to have my own house soon in Vasant Kunj. Suresh Bhatia, to whom my niece (brother's daughter) is wedded, met me in March, 1992. I do not know whether he had lodged any bad report in the Police Station regarding my abduction and murder. Whatever Suresh Bhatia has done, it is all figment of his mind and is wholly wrong.

Sd/- (in Hindi)

Smt. Sushila Wadhwa

21.6.92"

The affidavit of Smt. Sushila Wadhwa dated 24.6.1992 which is attested by Shri J.K. Ahuja and Shri Suresh Bhatia as witnesses on translation reads as under :-

"AFFIDAVIT

I, Sushila Wadhwa, wife of Balkishan Wadhwa, E-1/16, Malviya Nagar, New Delhi.

That I have sold my (above-mentioned) house to Shri Ashok Kaushik for Rs.7,50,000/- (Rs. Seven lacks and fifty thousand only).

That Shri Ashok Kaushik has deposited Rs. 5,00,000/- in my favor in the Punjab National Bank in the presence of my brother and Shri Suresh Bhatia.

That this has been done in accordance with my wish and desire.

That I have no complaint against anybody.

That it has been promised to make the payment of the balance amount of Rs. 2,50,000/- (Rs. Two lacs and fifty thousand only) with 45 days.

Sd/-(In English) Sd/-(in Hindi) (J.K. Ahuja) (Sushila Wadhwa) 24.6.92 24.6.92  
Sd/- (in English) (Suresh Bhatia) 24.6.92"

14. Statement of Shri Suresh Bhatia dated 24.6.92 on translation reads as undr :-

"It is stated that I reside at the address abovementioned and running a factory of corrugated boxes at Azadpur. On 19.06.92, a person, named, Prince, who resides at E-1/16, Malviya Nagar, told me at about 10.30 A.M. that mother (Smt. Sushila Wadhwa) had been going somewhere Along with one boy Padam Singh and his 3-4 companions, but they could not explain the purpose of going there from. Thereafter, I came to House No. E-1/16, Malviya Nagar and there Shri Ashok Kumar Kaushik Along with his other companions (father and other relatives) were found on the flat situated on the ground floor. At that time Prince was also with me. They in turn told me that they had purchased the said flat and they also handed over to me a card of the dealer through whom they had purchased the flat. I tried to contact the dealer on phone which could not materialise. Thereafter, I came to police station Malviya Nagar and lodged a written complaint in this behalf and I was informed on telephone at my house by police station Malviya Nagar that mother, Smt. Sushila Wadhwa, was quite safe and was at Mehrauli. I was asked to come and meet her.

On 21.06.92, I came to police station Malviya Nagar. On obtaining the address, I reached Mehrauli to see Mata ji (mother). On seeing me, she apprised me of her difficulties. I took her to my house situated at Pritampura as per her desire. I enquired into all the circumstances from her in the presence of my father-in-law and Ramesh Kumar Bhatia, and on 22.06.92, I narrated the same at police station Malviya Nagar, whereon you (police) summoned Ashok Kaushik, Dealer Raj Sharma and Padam Singh and the truth was highlighted. Whereupon Ashok Kaushik disclosed that he had given a sum of Rs.5,00,000/- to the mother and the balance amount was to be paid to her by him. He also produced written documents in this regard there which were personally perused by me and today you (police) have got deposited the said amount by Ashok Kaushik in the account of the mother bearing Account No. 6504, Punjab National Bank, Malviya Nagar. Now, the mother is going with me to my residence situated at Pritampura, voluntarily and of her own volition. Now, I have got no complaint against anyone. I have heard the statement and it is correct.

Sd/-

SURESH BHATIA

(in English)

Dt. 24.06.92"

15. Statement of Shri J.K. Ahuja dated 24.6.1992 which has been filed in this Court Along with the affidavit of ASI Ramesh Dixit dated 16.1.1996 on translation reads as under :-

"I reside at the above mentioned address and am employed in C.O.D. as U.D.C. On 19.6.92, my son in-law Shri Suresh Bhatia, the R/o Delhi informed me through telephone installed in my neighborhood to the effect that Mr. Prince informed on telephone from H.No. E-1/16, Malviya Nagar that Mataji had left the house in the morning hours without giving any sort of information whereupon, I came to the house of my son-in-law Shri Suresh Bhatia as F-I-U88, Pritam Pura, Delhi on 21.6.1992 and I found my sister Smt. Sushila Wadhwa in quite normal condition at the house of my son-in-law. I asked about the circumstances from my sister Smt. Wadhwa who told me that some boys had taken her signatures on some papers and after getting her flat vacated, she has been kept in some other house. She on being traced by the police, had come Along with Shri Suresh Bhatia. On 22.6.92, I Along with my sister, son-in-law and Ramesh Kumar Bhatia have gone to the P.S. Malviya Nagar where I came to know that because of the nephew of the son-in-law of my sister namely Padam Singh, the ground floor of flat No. E-1/16, Malviya Nagar has been sold to one Ashok Kumar for a sum of Rs. 7 lakhs and 50 thousand out of which a sum of Rs. 5 lakhs has been paid in respect thereof. The same has been deposited in the account No. 6504 of my sister at Punjab National Bank, Malviya Nagar,. Now my sister is all right and I have got no complaint against anyone. I have heard the statement and it is correct.

Sd/- J.K. Ahuja : 24.6.92"

16. An affidavit sworn by SI Ramesh Dixit on 5.12.95 has been filed in these proceedings confirming that he had recorded statements of Smt. Sushila Wadhwa on 21.6.92 and of Suresh Bhatia and J.K. Ahuja on 24.6.92 and copies of those statements have also been annexed with his affidavit.

17. The complainant Smt. Sushila Wadhwa (now deceased) in paras 6 & 7 of the complaint has alleged as under :-

"6. That the above said Nikhilesh Kumar Sharma @ Tara, Ashok Kaushik, Padam Singh with 3/4 companions abducted the applicant in the month of June, 1992 and took the forcible possession of the ground floor after removing my goods and kept me in a house at Mehrauli for 3 days. Shri Suresh Bhatia husband of my niece had lodged a report on 19.6.1992 in Police Station, Malviya Nagar and I was got recovered by Police on 21.6.1992.

7. That in the Police Station, Nikhlesh Kumar Sharma @ Tara and Ashok Kaushik agreed to pay Rs. 7.5 lacs to me against the sale consideration of ground floor and got executed a document for the sale of ground floor in total consideration of Rs. 7.5 lac out of which he has deposited Rs. 5 lac in my saving account in Punjab National Bank, Malviya Nagar and promise to pay Rs. 2.5 lac with 45 days, but have not paid the said amount, so far."

18. The report lodged by Shri Suresh Bhatia with the police on 19.6.1992 was about the disappearance of the complainant and her goods from ground floor of the house in question. The statements made by Suresh Bhatia, J.K. Ahuja and the affidavit dated 24.6.1992 of the complainant Smt. Sushila Bhatia reproduced above are very relevant for consideration of the question whether the complainant was abducted in June, 1992 and whether the agreement for sale of ground floor of the house was got signed from her forcibly for deciding the question whether any and if so what charge(s) could be framed. Either these documents could be taken into consideration on their face value or if any doubt is entertained on their genuineness/authenticity in that case it may be necessary to summon Suresh Bhatia, J.K. Ahuja and ASI Ramesh Dixit to prove their existence, correctness and authenticity.

19. The learned trial court has come to the following conclusion in this respect :

"However, the complainant alleges specifically that she was abducted by the accused persons and that the accused applied pressure on her to do certain acts. This allegation makes their statements useless at least at this stage. They might have been made under pressure and doubtful circumstances. Hence the acceptance by the witnesses in the court prior to framing of charge, that would not inspire confidence on account of the allegation of the alleged pressure. The situation would come to square one. Hence, I do not find, in the facts and circumstances mentioned above, that the examination of the witnesses prior to framing of the charge would help the ends of justice. The application is accordingly dismissed."

It may be mentioned that complainant Smt. Sushila Wadhwa has since died. Suresh Bhatia is the son-in-law of her brother whereas J.K. Ahuja is her brother. After her death, it is only they who are likely to be the witnesses in this complaint. For that purpose the statements made by them earlier would have great relevance.

20. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, the scope of Sections 203 and 204 of the Code has been considered by the Hon'ble Supreme Court and it has been held that in the following circumstances the complaint/FIR could be quashed or set aside.

"Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside :

(1) where the allegations made in the complaint or the statement of the

witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High court can quash proceedings."

21. In *Madhavrao Jiwaji Rao Scindia and Another Vs. Sambhajirao Chandojirao Angre and others* AIR 1988 SC 709, in para 7 also it has been stated as under :-

"The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, Therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

22. Again in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , it has been observed that the FIR and the proceedings could *inter alias* be quashed in respect of cases falling in the following categories No. 3, 5 and 7:

"3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

7. Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

23. The scope of power u/s 203/204 of the Code is similar to that of under Sections 227/228 of the Code. In the case of Satish Mehra Vs. Delhi Administration and Another, , while considering the scope of Section 227, it has been observed as under (para 14) :-

"The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code."

24. The learned trial court has obviously not taken into consideration the facts and circumstances as well as the relevant legal position.

25. For these reasons, this petition is allowed. The impugned order dated 21.2.1995 passed by the learned M.M. is set aside and the trial court shall reconsider the application for production of documents, if not already produced, and for summoning of the witnesses afresh in the light of the observations made hereinabove.

26. Petitioner shall appear before the trial court on 4.3.1999 unless an earlier date is fixed there.

27. Trial court record be sent back forthwith.