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**(2009) 03 DEL CK 0349**

**In the Delhi High Court**

**Case No :** Criminal M.C. 4170-73 of 2006 and Criminal M. 7072 of 2006 and 14566/06

Binay Kumar and Others

APPELLANT

Vs

State and Another

RESPONDENT

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**Date of Decision :** 16-03-2009

**Acts Referred:**

**Citation :** (2009) 03 DEL CK 0349

**Hon'ble Judges :** Dr. S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** Manoj K. Singh and Rupesh K. Gupta, for the Appellant; Pawan K. Behl, APP and Party-in-Person, for the Respondent

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## **Judgement**

S. Muralidhar, J.—These three petitions u/s 482 of the Code of Criminal Procedure, 1973 (CrPC) arise out of the common set of facts and are accordingly disposed of by this common judgment.

2. Criminal Misc. (C) No. 4170-73 of 2006 is by Binay Kumar Chaudhary, the President of the Container Corporation of India Employees Union (CCIEU), R.N. Mishra, Executive Member, CCIEU, K.K. Prashad, Office Secretary, CCIEU and Ranjeev Kumar, General Secretary, CCIEU. The prayer in the petition is for quashing of Criminal Complaint Case No. 1212/1 dated 5th July 2005 titled "Sanjeev Kumar v. Binay Kumar" and the proceedings consequent thereto. By an order dated 28th March 2006, Metropolitan Magistrate (MM), New Delhi summoned the accused persons (including the petitioners here) for the offences u/s 199/200/419/34 IPC and u/s 3(1)(ix) and Section 3(2)(vii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act [SC and ST Act] and 34 IPC. The complainant Mr. Sanjeev Kumar has been arrayed as Respondent No. 2 in the petition. In the said petition, Criminal Misc. (C) No. 4170-73 of 2006, notice was issued by this Court on 21st July 2006 and further proceedings before the trial court were stayed.

3. The second petition Crl. M.C. No. 4221-25 of 2006 has been filed by Ranjeev

Kumar, Samresh Kumar, Binay Kumar, v. Gangadhar and O. Sairam seeking the quashing of seeking the quashing of C.C. No. 1062/1 dated 28th May 2005, filed on the same facts by Respondent No. 2 Sanjeev Kumar against them. By an order dated 24th March 2006 the learned MM summoned the petitioners for the offences under Sections 199, 200, 419/34 IPC and Section 3(1)(ix) and 3(2)(vii) of the SC and ST Act. On 25th July 2006 while directing notice to issue in the said petition, Crl. M.C. No. 4221-25 of 2006, this Court stayed the further proceedings before the trial court and directed the petition be listed along with Crl. M.C. No. 4170-73/2006.

4. The third petition being Crl. M.C. No. 1262 of 2007 is by Umesh Sharma who is also an accused in Criminal Complaint No. 1212/1 and who was also summoned by the same order dated 24th March 2006 passed by the learned MM. Umesh Sharma is a lawyer who has been appearing on behalf of the CCIEU for more than ten years. In the said petition, Crl. M.C. No. 1262 of 2007, by an order dated 26th April 2007 this Court directed notice to issue and stayed the trial court proceedings.

5. In the aforementioned criminal complaints filed on filed on 28th May/9th June and 5th July 2005 respectively, the complainant (Respondent No. 2) claimed to be one of the active members of the CCIEU and that he had been elected several times as office bearer of its Executive Committee. He claimed in the complaint that he was "presently elected in the election held in February 2004 on the post of Vice President for the period of two years as provided in the Constitution of the Union registered with the Registrar of Trade Unions, Delhi". He stated that he had filed several complaints against the management of Container Corporation of India Ltd. (CCIL) regarding commission of unfair labour practices as well against the non-payment of eligible dues to the complainant. He gave details of 5 such complaints filed by him which were pending in the office of the Deputy Labour Commissioner (South) [DLC], Labour Department, Government of the National Capital Territory of Delhi (GNCTD). These complaints concerned alleged non-payment of medical reimbursement, ex-gratia benefits, subsistence allowance and arrears of wages.

6. It is stated that in each of the complaints 19th April 2005 was the date of hearing before the Assistant Labour Commissioner (South) [ALC]. The management of CCIL had been directed to pay to the complainant Rs. 48,233/- on that date. For some reason the complainant could not appear before the ALC on that date. Later it transpired that a statement was made before the ALC giving a false certificate of satisfaction of the claims as a result of which the complaints stood withdrawn. The complainant accused the aforementioned petitioners with furnishing false information and statement to a public servant, i.e. the ALC, thus attracting the offences under Sections 181 and 182 IPC. It was further alleged that a forged certificate dated 19th April 2005 signed by accused Nos. 1 and 6 was produced before the ALC thus attracting the offences under Sections 193, 196, 197, 198, 199, 200, 468, 470 and 471 IPC. The complainant

further alleged that the accused persons had "impersonated to be the members of the executive committee of the union" and had withdrawn the complaints and thereby causing injury to the complainant and that this attracted the offences under Sections 418, 419 and 420 IPC.

7. The further allegation was that the accused persons had intentionally given false information to the ALC, a public servant who had relied upon such false information and the closed the complaints. This had caused injury and annoyance to the complainant who was a member of a Scheduled Caste and therefore the provisions of Section 3(1)(ix) and 3(2)(vii) of the SC and ST Act also stood attracted.

8. The complainant listed as the Complainant's witnesses himself, one Suresh Kumar Ranga, the concerned Officer from the office of the DLC (South) and "any other witnesses." The complainant examined himself as CW-1 and Suresh Kumar Ranga as CW-2. Suresh Kumar Ranga deposed that he was the General Secretary of CCIEU and that he had not authorized anyone to withdraw the complaints.

9. The case of the petitioners is that they have been working in the CCIL, a public sector undertaking and that they are the office bearers and members of the CCIEU holding the designations as indicated in the petition. According to the petitioners, they became office bearers of the CCIEU having been elected in the elections held in 2005-06. They informed the Labour Commissioner and the DLC of their being elected by a letter dated 7th April 2005. According to the petitioners the complainant Sanjeev Kumar, and Suresh Kumar Ranga are both dismissed/removed employees of the CCIL. They lost the elections to the CCIEU held on 7th April 2005. They became inimical to the petitioners and started threatening them that they would be falsely implicated in some criminal cases. Counsel representing the CCIEU was also threatened. They filed the first criminal complaint 1062/1 on 28th May 2005. On 13th June 2005 the CCIEU lodged a protest with the ALC in regard to the threats received by its office bearers. It is stated that shortly thereafter the second complaint 1212/1 was filed on 5th July 2005.

10. It is pointed out by the petitioners that soon after being defeated in the elections Suresh Kumar Ranga filed Suit No. 30 of 2005 in the Tis Hazari Courts, Delhi against the office bearers of the CCIEU seeking permanent injunction against them. In the said suit he represented himself to be the General Secretary of CCIEU. The fact that both Sanjeev Kumar, complainant and Suresh Kumar Ranga had lost the elections for the year 2005-06 was not disclosed in the said suit. By a detailed order dated 25th April 2005, the learned Civil Judge, Delhi dismissed the application filed by Suresh Kumar Ranga under Order 39 Rule 1 and 2 CPC seeking a temporary injunction. The operative portion of the said order reads as under:

The prayer in the injunction application seemed to be vague. The plaintiff prays

to direct the defendants not to represent as officer bearers of the plaintiff before any authority. The plaintiff further prays that the defendants be restrained from doing any act in the name of the plaintiff. The Ld. Counsel of the plaintiff was asked during arguments on what exact damage would be caused to plaintiff by the defendants. The Ld. Counsel for the plaintiff revealed that defendants are trying to withdraw certain legal proceedings for compensation etc., filed by the workers through the plaintiff union, before the labour commissioner and other authorities. The Ld. Counsel further submitted that these proceedings are withdrawn, it would be against the interest of the workers and also cause damage to the reputation of the plaintiff. In my opinion for the reason above no injunction can be issued against the defendants. It is for the workers to see whether withdrawal of proceedings would be in their interest. Further, defendants must have been having authority to withdraw the same. The withdrawal of proceeding would cause no harm or damage to the plaintiff. The application has no merits and the same is hereby dismissed.

11. What is significant is that the fact of the filing of the above suit and the passing of the above order was not disclosed in either of the two complaints filed on 28th May and 5th July 2005 respectively by the complainant Sanjeev Kumar in which he named Suresh Kumar Ranga as a witness. Further Suresh Kumar Ranga also did not disclose this fact in his pre-summoning evidence recorded before the learned MM on 7th October 2005.

12. Aggrieved by the dismissal of the application under Order 39 Rule 1 & 2 CPC, Suresh Kumar Ranga filed an appeal being MCA 73/2005 in the Court of the Senior Civil Judge, Delhi. By a judgment dated 18th August 2005 the said appeal was dismissed. It was pointed out by the learned Senior Civil Judge that after the respondents in the application (petitioners herein) had stated that an election had already been taken place and that since the new executive members had taken charge of their respective offices in the CCIEU for the year 2005-06, the suit had necessarily to be amended to seek a declaration with respect to the new members of the elected union. It was also noticed that the issue as to who constituted the real union was pending before the High Court.

13. The petitioners state that although by the stage of recording of the pre-summoning evidence of the complainant's witnesses the aforementioned appeal was dismissed, neither the complainant Sanjeev Kumar (Respondent No. 2) nor the other witness Suresh Kumar Ranga mentioned this in their respective depositions before the learned MM during the recording of the pre-summoning evidence or even during the course of arguments preceding the summoning order dated 24th March 2006.

14. The one of the grounds on which the quashing of the complaints is sought that by deliberately concealing the above facts, the complainant has abused the process of law and should be denied relief on that ground alone.

15. In reply, it is submitted by Respondent No. 2 who appears in person, that he

himself was not a party to the civil suit and therefore he cannot be faulted with concealing in the criminal complaint the fact concerning the order dated 25th April 2005 passed by the learned Civil Judge.

16. The above submissions have been considered by this Court. The petitioners are right in their contention that learned MM was not informed by respondent No. 2 complainant or by Suresh Kumar Ranga of the civil litigation and the orders passed therein rejecting their plea for a temporary injunction. This concealment is indeed material as the order dated 25th April 2005 shows that the plaintiff Suresh Kumar Ranga did raise a point about the authority of the newly elected office bearers (i.e the petitioners herein) to withdraw the complaints before the ALC. The Civil Judge declined to pass an order restraining the latter in that regard. The explanation offered by Respondent No. 2 in his written submissions that he was not a party to the suit and therefore "need not have had to mention it in his complaint" is too simplistic and incredible. There can be no manner of doubt that the Respondent No. 2 was fully in the know of the developments surrounding the elections to the CCIEU held on 7th April 2005. He and Suresh Kumar Ranga had, according to the petitioners, lost those elections. That was why the civil suit was filed seeking a permanent injunction against the petitioners. Suresh Kumar Ranga was himself the complainant's witness and he deposed as such before the learned MM in October 2005. Even if one were to accept the above explanation by complainant Sanjeev Kumar about not disclosing the above facts in the criminal complaint, there is no justification whatsoever in not bringing the facts to the notice of the learned MM either in writing subsequently or even during the recording of the pre-summing evidence. Both these persons were by then fully aware of the above facts and deliberately chose not to reveal them to the learned MM. The said facts had a direct bearing on the question whether the petitioners had acted without the authority of law in withdrawing the complaints pending before the ALC. In the circumstances, this Court finds the conduct of the Respondent No. 2 in suppressing material facts before the learned MM to be a gross abuse of the process of law and fatal to the complaints. Both complaints deserve to be quashed on this ground alone.

17. It is next submitted by the petitioners that the order dated 25th April 2005 passed by the Civil Judge in the suit by Suresh Kumar Ranga rejected the contention that the petitioners herein should be restrained from doing any act in the name of the CCIEU as it would be prejudicial to the plaintiff (Suresh Kumar Ranga). In response to the submission made on behalf of the Suresh Kumar Ranga that "defendants are trying to withdraw certain legal proceedings for compensation etc., filed by the workers through the plaintiff union, before the labour commissioner and other authorities", the learned Civil Judge observed that "it is for the workers to see whether withdrawal of proceedings would be in their interest". It was held that the "withdrawal of proceedings would cause no harm or damage to the plaintiff". It is submitted that the aforementioned order was affirmed by the learned Senior Civil Judge on 18th May 2005 attained finality

even before the filing of the first criminal complaint i.e.1062/1 on 28th May 2005. In effect the allegation in the criminal complaint that the withdrawal of the complaints before the ALC by the petitioners acting on behalf of the CCIEU was without the authority of the law was untenable in law.

18. The reply by Respondent No. 2 to this submission is that it raises disputed questions of fact which ought not to be examined by this Court in exercise of its powers u/s 482 CrPC. According to him this can only be examined at a full-fledged trial. Reliance is placed by respondent No. 2 on the decisions in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , M. Narayandas v. State of Karnataka JT 2003 (Suppl) SC 412 and R.S. Raghunath Vs. State of Karnataka and another, and a large number of other decisions. Reliance is placed on a letter dated 27th October 2005 purportedly issued by the ALC observing that it is Suresh Ranga who is the Secretary of the CCIEU and reviving the complaint which had been withdrawn by the order dated 19th April 2005.

19. In the considered view of this Court on the facts of the present case, the above decisions are not helpful to the Respondent No. 2 since the facts are not in dispute. They are discernible from the record itself. The proceedings before the ALC on 19th April 2005 in complaint No. CO.III/COMPT/04/SD records that the union filed a letter dated 19th April 2005 stating that it did not support the complaint and was withdrawing it. A similar statement was recorded as regards the complaint made by the complainant for ex-gratia benefits, i.e., No. Compt.110/3/SA/III and complaint No. Compt./02/IV and complaint No. 97/ALC/ND/SD30/04. The learned ALC accepted this submission. The ALC was bound to take note of the stand of the present office bearers of the CCIEU and act accordingly. No fault can be found with the learned ALC for doing so. It is further noticed that the issue of the validity of the elections was itself pending before this Court and there was no order by the civil court restraining the petitioners herein from discharging their function as elected office bearers of the CCIEU.

20. The Respondent No. 2 who appeared in person sought to contend that the complaint could not have possibly been withdrawn by the union as they were concerned with payments of dues to the complainant. However, it was not disputed by the Respondent No. 2 that these complaints had in fact been counter-signed by the union which was espousing the cause of the Respondent No. 2. The question regarding the authority of the newly elected office bearers to withdraw the case which was specifically urged before the learned Civil Judge and rejected by him by the order dated 25th April 2005. As already noticed, the said order has been upheld by the learned Senior Civil Judge by the order dated 18th May 2005. In the circumstances, the submission of the petitioners before the ALC on 19th April 2005 and the order passed by the latter on that day on the basis of such statement cannot be faulted with. This Court finds no basis whatsoever for the allegation made in the two complaints that the withdrawal of the suit by the newly elected office bearers acting on behalf of the CCIEU was without the authority of the law.

21. The fact that the complaints have subsequently been revived by the ALC as alleged by the complainant was also concealed before the learned MM. In any event if indeed they have been revived then no prejudice has in effect been caused to the complainant. Viewed from any angle, there appears not even a prima facie case made out for proceeding against any of the petitioners for the offences for which they have been summoned. As far as Umesh Sharma is concerned, he was only acting as a lawyer for the CCIEU and in the facts and circumstances, there was no justification whatsoever for summoning him for any of the offences.

22. This Court is of the considered view that when the complaints are read as a whole not even a prima facie case is made out for taking cognizance of any of the offences and summoning the petitioners.

23. Accordingly, the Complaint Case No. 1062/1 dated 28th May 2005 titled "Sanjeev Kumar v. Ranjeev Kumar and Ors." and Complaint Case No. 1212/1 dated 5th July 2005 titled "Sanjeev Kumar v. Binay Kumar and Ors." and all proceedings consequent thereto including the summoning order dated 24th March 2006 passed by the learned MM, Patiala House Courts, New Delhi shall stand quashed.

24. The petitions and applications accordingly stand disposed of. A copy of this order be sent to the learned MM concerned forthwith.