
(2011) 08 DEL CK 0163

In the Delhi High Court

Case No : Criminal M.C. No. 2109 of 2008 and Criminal M.A. No. 7850 of 2008

C.E. Constructions Ltd.

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204
New Delhi Municipal Council Act, 1994 — Section 252, 369(1)

Citation : (2012) 1 JCC 74

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Vijay Aggarwal, for the Appellant; Fizani Husain, APP for R-1 and Asutosh Lohia, for R-2, for the Respondent

Judgement

Ajit Bharihoke, J.—Petitioner is aggrieved of the summoning order dated 09.05.2003 issued by the learned Metropolitan Magistrate on the complaint preferred by the NDMC u/s 252/369(1) of the NDMC Act, 1994. The NDMC in its complaint titled New Delhi Municipal Council v. Anil Gawa, Manager. C.E. Construction Ltd and Ors. had alleged that the Petitioner company and others are guilty of violation of provisions of NDMC Act inasmuch as they had changed the user of Flat No. 6A Girdhar Apartment, 28 Firoz Shah Road, New Delhi from residential to commercial purpose with the consent, knowledge and abetment of the co-accused Gyan Prakash Ahluwalia.

2. The NDMC alleged that the Petitioner company on the date of inspection i.e. 24.02.2003 was in occupation of the said flat. Statutory notice u/s 252 NDMC Act was served upon the Petitioner and the co-accused persons calling upon them to stop the misuse of premises. The notice was duly served on 07.03.2003 and it was also served by CRD post on 17.03.2003. The Petitioner as well as co-accused persons neither replied to the notice nor they stopped the misuse. This led to filing of the complaint.

3. Learned Metropolitan Magistrate vide the impugned order dated 09.05.2003

took cognizance and summoned the Petitioner and his co-accused persons for seeking trial for the offence punishable u/s 252/369(1) of the NDMC Act, 1994.

4. Main ground urged for setting aside of the impugned summoning order is that the order is a stereo type one issued on a pre-prepared performa by filing in the blanks. Learned Counsel contended that this clearly discloses utter non-application of mind to the allegations in the complaint by the court. In support of this contention, Petitioner has relied upon the judgment in the matter of Ravinder Goel and Another Vs. State and Another, s also Charanjeet Vs. DDA and another,

5. In Pepsi Foods Ltd and Anr. v. Special Judicial Magistrate and Ors. 1998 SCC 1400, the Supreme Court observed thus:

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

6. From the above enunciation of law, it is obvious that the Magistrate before summoning the accused is under obligation to carefully scrutinize the complaint and other material to come to the conclusion whether or not, any offence is prima facie committed by the accused.

7. Karnataka High Court in the matter of D.A. Mehta and 2 Ors. v. The Regional Director, E.S.I. Corpn., Criminal Petition Nos. 1562 and 1563 of 1988, while dealing with the legality of summoning order issued on a printed performa, set aside the summoning order with following observation:

This order is passed in a printed proforma wherein only the date of the order is mentioned in column 2 and the date for the return of the summons is mentioned and the learned Presiding Officer has put his initials. Section 204 Code of Criminal Procedure lays down the procedure to be followed for the issue of process. It lays down that the Magistrate shall issue summons or the warrant as the case may be only if in his opinion there is sufficient ground for proceeding. The Magistrate is required to form an opinion that there is sufficient ground for proceeding in the case and for forming that opinion, the Magistrate will be required to apply his mind to the material placed before him and if an order is

passed in a printed proforma simply by filling up the gaps for the dates there, it only shows that the Magistrate has not studied the material placed before him and not applied his mind and not formed any opinion about proceeding further in the matter. Such an order which is passed in a mechanical manner without application of the mind and in a printed proforma does not satisfy the requirements of Section 204 Code of Criminal Procedure and such an order deserves to be set aside. The very fact that printed proforma is used in these cases goes to show that the learned Presiding Officer has passed the orders without taking the trouble of looking into the records and forming an opinion as to whether there is sufficient ground for proceeding. If such orders are challenged, this Hon'ble Court will be justified in quashing such untenable orders. Therefore, it is necessary that the Magistrates who are required to take cognizance of the offence and issue process follow the law as laid down in Section 204 Code of Criminal Procedure , and apply their mind and form an opinion that there is sufficient ground for proceeding in the matter before passing the matter.

8. The principle laid down in D.A. Mehta's case (supra) was followed by this Court in Ravinder Goel (supra) wherein learned Single Judge of this Court, *inter alia*, observed thus:

5. One of the singular characteristics of a judicial order is that it would disclose application of mind, in the given facts at hand. The Respondents have not denied the stereotyped format used by the trial Court with particulars filled at appropriate places, in hand, and signed by the Magistrate. Such an "order" could have passed muster if it was a show cause notice in administrative proceedings. It cannot, however stand scrutiny where as in the present case, the consequences are penal in nature.

9. In the instant case, undisputedly the summoning order has been passed on a pre-prepared performa with blanks which has been filled in by hand. It is difficult to ascertain whether those blanks have been filled in the handwriting of Presiding Magistrate or some of its staff members. Summoning order does not refer to material allegations in the complaint constituting offence. Therefore, it is obvious that the summoning order has been passed in routine manner on its stereotype format used by the learned M.M. without due application of mind to the averments made in the complaint. Such "order" could have passed muster if it was a show cause notice in an administrative proceeding. It, however, cannot stand scrutiny of law where the consequences of summoning orders are penal in nature.

10. In view of the above reasons, I am of the opinion that the impugned summoning order cannot be sustained. It is accordingly set aside. The matter is remitted to the concerned court for reconsideration of the complaint and passing appropriate orders in accordance with law after considering the material on record.

11. Petition stands disposed of.