

(2009) 04 DEL CK 0485

In the Delhi High Court

Case No : Criminal M.C. No's. 450 and 3458 of 1999

Dr. M.K. Wats

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Criminal Procedure (Amendment) Act, 1978 — Section 5
Criminal Procedure Code, 1973 (CrPC) — Section 14, 15, 17, 19, 340
Penal Code, 1860 (IPC) — Section 11, 120B, 13, 18, 191

Citation : (2010) 6 RCR(Criminal) 1475

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Deepak Kumar, for S.K. Dubey, for the Appellant; Navin Sharma, APP, for the Respondent

Final Decision : Disposed Off

Judgement

Mool Chand Garg, J.—This common order shall disposed of the aforesaid two petitions filed u/s 482 of the Cr.P.C by Dr. M.K. Wats (hereinafter referred to as "the petitioner). Both the aforesaid petitions arises out of a complaint filed by the petitioner u/s 340 Cr.P.C. before the Court of ACMM, New Delhi which was assigned to the Court of the Metropolitan Magistrate for holding an inquiry and in which after holding an inquiry the said Metropolitan Magistrate filed a complaint before the ACMM again who then again marked the said case to another Metropolitan Magistrate for trial of the cases. Vide his order dated 05.01.1990 the Magistrate to whom the complaint was marked after holding an inquiry issued summons to accused Ram Lubhaya Sharma, Head Constable Subhegh Singh, S.I. Sunil Kumar, and Sh. R.D. Behot, the then Assistant Superintendent Jail, Central Jail, Tihar for facing trial with respect to offences disclosed in the complaint u/s 466/468/478/342/341 IPC. However at that time the Metropolitan Magistrate did not issue summons to Sh. Om Prakash and Sh. Satwant Singh as against the order passed by the Metropolitan Magistrate dated 05.01.1990 and the order dated 24.02.1990 Sh. Ram Lubhaya Sharma filed an appeal against the

said order u/s 341 Cr.P.C. which was registered as CrI.A. No. 122/1997. This appeal was allowed by the Court of Additional Sessions Judge vide order dated 06.08.1998. It is this order which has been challenged by the petitioner in CrI.M.C. 3458/1999.

2. Insofar as the order of the Magistrate in having not issued summons to Sh. Om Prakash and Sh. Satwant Singh is concerned the petitioner preferred an revision which also came up for hearing before the same Sessions Judge who dismissed the same vide order dated 13.10.1998 which order is subject matter of CrI.M.C. 450/1999.

3. The impugned orders proceeds on common assumptions that:

i) the inquiry in the allegations was not conducted by the same judge who released the petitioner on bail on his arrest by the Punjab Police at the instance of Dr. Ram Lubhaya Sharma after including offences u/s 326 IPC which was not mentioned in the warrants issued by the JMIC, Amritsar where a complaint was filed by Ram Lubhaya Sharma against the petitioner.

ii) the Court while making a complaint is to record the findings to the effect that it is expedient in the interest of justice that a complaint is to be filed for holding an inquiry. In the order dated 12.2.90 there is no finding of the complainant to the effect that it is expedient in the interest of justice to file a complaint against the accused person.

4. The factual matrix giving rise to the filing of the present petitions are:

i) somewhere in 1985 the petitioner filed a case against one Ram Lubhaya Sharma on the allegation that the said Ram Lubhaya Sharma cheated him by fabricating a special power of attorney to sell the petitioners industrial plot situated in Gurgaon, Haryana. It was alleged that the said Ram Lubhaya Sharma had been compelling the petitioner to withdraw the said case failing which he threatened him to implicate the petitioner in false cases in Punjab.

ii) Since the petitioner had not agreed to withdraw the complaint filed by him, Ram Lubhaya Sharma filed a complaint before the JMIC, Amritsar and on that basis obtained warrants against the petitioner for his arrest. It was on that basis the petitioner was arrested by local police officials of Delhi at the instance of one Sh. Subegh Singh, Head Constable in Punjab Police in presence of Ram Lubhaya Sharma and others pursuant to a non-bailable warrant issued by JMIC, Amritsar dated 12.08.1986 for having committed offences u/s 324/326 IPC. The petitioner was then produced before the duty Magistrate who sent the petitioner in judicial custody. However, the petitioner was granted transit bail on 02.01.1987 with a condition that he would appear in the Court of JMIC, Amritsar on 15.01.1987.

iii) However, despite the aforesaid bail order, the petitioner was not released from Central Jail, Tihar as a forgery was committed on the release warrants by the Assistant Superintendent, Jail at the instance of Ram Lubhaya Sharma and the officials of Punjab Police and for that reason the petitioner remained confined for

one more day in the Tihar Jail.

iv) The petitioner having approached JMIC, Amritsar came to know that on the complaint filed by Satwant Singh at the instance of Ram Lubhaya Sharma warrants were issued against him on 12.08.1996 only u/s 324 IPC which was a bailable offence but Section 326 IPC was added in those warrants basically to make the offences non-bailable in furtherance of common intention and common object which enabled the respondents to arrest the petitioner and keep him in judicial custody and thereafter for another day by forging the release warrants.

v) The petitioner then filed an application u/s 340 Cr.P.C. on 22.05.1987 before the ACMM, Patiala House Courts, New Delhi praying inter alia to hold an enquiry against the accused persons under Sections 466/468/471/342/34 IPC read with Section 120-B IPC which application was marked to Sh. D.R. Jain, Metropolitan Magistrate at the relevant time to hold an inquiry.

vi) After conducting the inquiry Sh. D.R. Jain concluded that Sh. Ram Lubhaya Sharma and Head Constable Subegh Singh, S.I. Sunil Kumar and Sh. R.D. Behot, Assistant Superintendent, Jail should be summoned, tried and punished for the offences under Sections 466/468/471/342/34 IPC vide his order dated 05.01.1990.

vii) The observation made by MM reads as under:

I have perused the application u/s 340 Cr.P.C. and the record regarding enquiry in the present application. As it is evident that the warrant against the applicant M.K. Wats was u/s 324 IPC only as per order of the Court of Shri S. S. Gupta, JMIC, Amritsar, dated 12.8.1986 and as it is evident that the respondent Ram Lubhaya Sharma was in connivance with H.C. Subegh Singh No. 1188/ASR/Divn. III, P.S. Amritsar Punjab forged the warrant by adding u/s 326 IPC in the aforesaid warrant and as it is evident that Respondent Ram Lubhaya Sharma in connivance with the aforesaid H.C. Subegh Singh No. 1188/ASR/Divn. III along with I.O. Sunil Kumar SI No. D-1123 3rd Battalion DAP and RD Bahot and then Assistant Superintendent Jail, Tihar in charge of the custody warrant forged the jail warrant by adding that the accused be not released as he is wanted in other cases despite the fact that applicant/accused had been ordered to be released on bail and no other case was pending against him and tehse accused persons committed forgery in respect of the record of the court for the purpose of cheating the court as well as the applicant with intention to wrongfully confinement and used the same as forged document, a complaint be made before Ld. ACMM, New Delhi u/s 466/468/471/341/34 IPC against the aforesaid Ram Lubhaya Sharma R/O 630, Vikas Kunj, Vikaspuri, New Delhi. HC Subhegh Singh No. 1188/ASR Divn. II P.S. Amritsar, SI Suni Kumar No. D-1123 and R.D. Behot, Assistant Superintendent, Central Jail, Tihar, New Delhi. The record of the present enquiry be enclosed with the said complaint.

viii) Consequently, he also filed a complaint before the learned ACMM, New Delhi to take cognizance of the offences against the accused persons on 12.02.1990.

The aforesaid complaint was marked to Sh. Brijesh Sethi, M.M., New Delhi for trial in accordance with law.

ix) Vide his order dated 24.02.1990, Sh. Brijesh Sethi, took cognizance of the complaint and issued summons for 24.04.1990 against the accused persons except Sh. Ram Lubhaya Sharma and Sh. Satwant Singh respondents No. 2 and 3 in CrI.M.C. 450/1999.

5. The learned ASJ has disposed of the appeal filed by Sh. Ram Lubhaya Sharma vide his order dated 06.08.1998 with the following observations:

4. I have called for the record and from the record it is evident that it was the Court of Shri Bharat Bhushan ACMM New Delhi before whom bail application was moved which was allowed on 02.01.1987 and in the order dt. 2.1.87 it has been specifically mentioned that M.K. Wats has been produced by Soebeg Singh with the prayer seeking transfer of the accused to Amritsar and it is stated that the accused had been arrested in Delhi in pursuance of the NBW issued by Ld. JMIC Amritsar for the offence punishable u/s 324/326 IPC. It has been observed that perusal of the record shows that accused had been arrested by the Punjab police on 1.1.87 and was produced before the Duty Magistrate who had remanded the accused to judicial custody till today i.e. 2.1.87 and stated that bail application has been moved and has stated that the accused is 60 years of age and as such the accused was directed to be released on bail subject to furnishing a personal bond in the sum of Rs. 5,000/- with one surety in the like amount. The accused was directed to appear before JMIC Amritsar on 15.1.87. It has been specifically mentioned in the order that in the warrants received from jail a note has been made thereupon that the accused should not be released on bail as other cases are also pending against him. So under the circumstances the accused be released from jail if not wanted in other case.

5. so it is evident that so far as warrants is concerned the same was produced before the Court of Shri Bharat Bhushan ACMM New Delhi and not before the Court of Shri. D.R. Jain, MM New Delhi who had filed the complaint. The name of the Duty Magistrate before whom the accused was produced cannot be borne out from the record as none of the witnesses have stated the name of the duty magistrate, who initially remanded the accused till 1.1.87 to J.C. and before whom the alleged forged warrants in which Section 326 IPC was added was produced.

6. From the order of the complainant Shri. D.R. Jain it is evident that he is not the person before whom either the accused M.K. Wats was initially produced or jail warrants were produced or that he conducted the inquiry u/s 340 Cr.P.C.

7. A bare reading of Section 340 Cr.P.C. reveals that application u/s 340 Cr.P.C. is to be moved before the Court and an inquiry should be made by that complainant into any offence referred to in Clause (b) of Sub-section (1) of Section 195 which appears to have been committed in or in relation to a proceeding in that Court or as the case may be, in respect of a document

produced or given in evidence in a proceeding in that Court and it is that court who is to hold preliminary inquiry.

8. From the above it is evident that the complainant had not held any inquiry nor it is clear from the record that offence of forgery for which a complaint was made were committed in the proceedings pending before him. As such that court cannot be said to be competent court to recommend initiation of the proceedings u/s 340 Cr.P.C. or to file a complaint.

9. Another aspect of the matter is that the Court while making a complaint is to record the findings to the effect that it is expedient in the interest of justice that a complaint is to be filed for holding an inquiry. In the order dated 12.2.90 there is no finding of the complainant to the effect that it is expedient in the interest of justice to file a complaint against the present appellant. In B.K. Pal Chaudhry Vs. The State of Assam, has held that in a case covered by Sub-section 5 of Section 479-A the terms of both subsections (1) and (5) have to be complied with. The combined effect of these Sub-section is to require the Court intending to make a complaint, to record a finding that in its opinion a person appearing as a witness has intentionally given for the evidence and that for eradication of the evils of perjury and in the interests of justice. It is expedient that such witness should be prosecuted for the offence and to give the witness proposed to be proceeded against an opportunity of being heard as to whether a complaint should be made or not. It is further held that when such finding is not recorded that the witness had intentionally given any false evidence or that it was expedient to proceed against him for the eradication of the evils of perjury and in the interest of justice the order was made in breach of the express provisions of the section and could not be allowed to stand.

10. In K.K. Khanna and another Vs. M/s Expo Enterprises India, New Delhi and others, our own Hon'ble High Court has held that where a criminal complaint for offences alleged to have been committed u/s 191 read with Section 193 IPC was directed to be lodged, the order for lodging of a criminal complaint could not be said to have been vitiated when it was nowhere opined or recorded in the order as a fact that the lodging of the complaint against the accused was expedient in the interest of justice as required u/s 340 Cr.P.C. it was further held that this requirement of law was fundamental importance and the omission in that regard vitiated the order.

11. In the present case there is no such observation or finding by the complainant in the order. Even on factual aspect the only allegation against the present applicant is that he had lodged a complaint at Amritsar Court and that some of the accused persons have committed the forgery and the present applicant has not been named as the person who has committed forgery. The complaint is not u/s 120-B IPC but is for forging the document. The document alleged to have been forged admittedly could not come in the hands of the present appellant as the same were admittedly handled by some of the Govt. Officials. As such it cannot be said that unless the complaint is for conspiracy

that it is the appellant who had forged the document.

12. In view of the above discussion appeal is allowed. The complaint filed being not in accordance with law. No cognizance of the same can be taken. As such the summoning order passed by the Ld. Trial Court against the present appellant is set aside. Revision petition be consigned to record room. Copy of this order be sent along with the trial Court record.

6. On the same reasoning the learned ASJ dismissed the revision petition filed by the petitioner for having not issued the summons to Sh. Om Prakash and Sh. Satwant Singh who are arrayed as respondents No. 2 and 3 in CrI.Rev.P. 450/1999 by the MM vide his order dated 05.01.1990. Sh. Brijesh Sethi, MM, took cognizance of the complaint and issued summons for 24.04.1990 against the accused persons vide his order dated 24.02.1990.

7. Having heard the parties, I am of the considered opinion that the facts have not been correctly appreciated by the ASJ which are as follows:

i) The petitioner was arrested by officials of Punjab Police on the basis of a warrant issued by JMIC, Amritsar which as per the allegations made by the petitioner in his application u/s 340 Cr.P.C. was issued against him only in respect of offences committed u/s 324 IPC

ii) The petitioner was, however, arrested by Delhi Police officials at the instance of Ram Lubhaya Sharma and the officials of Punjab Police who while producing the petitioner before the ACMM/Duty Magistrate submitted that the petitioner had been arrested u/s 324/326 IPC. Even though the petitioner was produced before a duty magistrate who also acts as the representative of CMM/ACMM in cases where the persons arrested are brought before the Court after the normal working hours of the Courts and more particularly in cases where the accused is arrested in respect of a case which has been registered outside Delhi and therefore when the duty Magistrate took cognizance of the case on production of the petitioner before him he also exercised the powers vested in the Court of ACMM as his representative.

iii) Admittedly, the petitioner was then produced before ACMM on the next date. It was again the ACMM relying upon the warrant of arrest u/s 324/326 IPC finding it to be a non-bailable offence granted the petitioner a transit bail but on account of the procedure involved and the arrest of the petitioner on the basis of a non-bailable offence the petitioner had to remain in custody firstly for a day in judicial custody and secondly in jail custody for another day on account of the procedure involved in releasing him despite bail order.

iv) The application u/s 340 Cr.P.C. was filed by the petitioner after he came to know about commission of forgery having visited Amritsar. It was thereafter he filed the complaint before the ACMM. The ACMM who also has the administrative control and power to mark the cases filed before him to another Court as per the scheme of Code of Criminal Procedure marked the said complaint to the MM

namely Sh. D.R. Jain who did apply his mind to the facts of the case and has passed a speaking order dated 05.01.1990 which reflects that it is only after being satisfied that a forgery was committed in respect of the record of the Court for the purpose of cheating the Court as well as the petitioner with an intention to wrongfully confine him and which document was used as a forged document, the accused persons prima facie were guilty of offences u/s 466/468/470/342/34 IPC and after recording the aforesaid finding the complaint was filed on 12.12.1990 which gives all the facts and also encloses a list of witnesses as to how the facts would be proved. The satisfaction that it is expedient and in the interest of justice to prosecute the petitioners is clearly borne out of the order dated 05.01.1990 passed by the Metropolitan Magistrate before making the complaint as observed by me in sub para 7 of paragraph 4 of this judgment (supra)

8. It may be observed the Court of Sh. D.R. Jain, MM, New Delhi while performing the aforesaid functions was performing the functions of the Court concerned, i.e., ACMM and was dealing with the allegations of the petitioner about commission of forgery during the course of judicial proceedings and was performing his functions in view of the administrative instructions after the case was marked to him by the ACMM on administrative side. There was nothing wrong in the said procedure because this is the only procedure which is contemplated u/s 340 Cr.P.C. It is normal that the court where the initial forgery might have been committed may not be in session at the relevant time as and when a complaint is filed, it is quite possible that the court may be promoted or transferred to some other jurisdiction. If a strict view as is contemplated vide order passed by the ASJ is taken then a complaint u/s 340 Cr.P.C. would never see the light of the day. The purport of Section 340 Cr.P.C. is only that once such a complaint is filed the Court may either hold a preliminary inquiry himself or mark it to somebody else. It is only after holding an inquiry, it is required to give a finding that it is expedient and in the interest of justice may file a complaint himself or in the alternative may also ask a Magistrate competent to take cognizance of the offences and to hold such an inquiry and proceeding with lodging of a complaint if required and it is for that reason Sub-clause (b) has been incorporated under sub-section (1) of Section 340 Cr.P.C.

9. It is at this juncture, it would be appropriate to take note of the provisions contained u/s 340 Cr.P.C. which reads as under:

340 - Procedure in cases mentioned in Section 195:

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,:

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by Sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.]

(4) In this section, "Court" has the same meaning as in Section 195.

10. A bare reading of the aforesaid provisions goes to show that what is contemplated under this Section is that the offences should have been committed during the judicial proceedings. The said term does not talk of any specific court but talks of "during judicial proceedings".

11. Provisions of Section 340 Cr.P.C. have come up for interpretation before the Apex Court in its judgment delivered in the case of K.T.M.S. Mohd. and another Vs. Union of India, where it has been held:

34. In this context, reference may be made to Section 340 of the Code of Criminal Procedure under Chapter XXVI under the heading "Provisions as to certain offences affecting the administration of justice". This section confers an inherent power on a Court to make a complaint in respect of an offence committed in or in relation to a proceeding in that Court, or as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, if that Court is of opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in Clause (b) of Sub-section (1) of Section 195 and authorises such Court to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing after recording a finding to that effect as contemplated under Sub-section (1) of Section 340. The words "in or in relation to a proceeding in that Court" show that the Court which can take action under this section is only the Court operating within the definition of Section 195(3) before which or in relation to whose

proceeding the offence has been committed. There is a word of caution inbuilt in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by this Section 340 of the Code should be used with utmost care and after due consideration....

12. The above observation shows that the enquiry which is contemplated relates to offences committed in or in relation to a proceeding in that Court. However, it does not mean the specific Court, but means that such an offence should have been committed in the Court or in relation to whose proceedings have been committed. The only caution added is that the Court which recommend filing of a complaint or which makes a complaint must be satisfied that it would be expedient in the interest of justice to take out such proceedings. In the present case the petitioner was produced before the Court of ACMM after he was produced before the duty Magistrate concerned. The ACMM on being produced relying upon the warrant of arrest which reflected that the petitioner had been arrested in a case u/s 324/326 IPC granting the transit bail to the petitioner. According to the petitioner forgery was committed by Shri Ram Lubhaya Sharma in coalition with the officials of Punjab Police and officials of Delhi Police in having added the provisions of Section 326 IPC in addition to the provision of Section 324 IPC. This is element of forgery which is alleged to be the basis of filing of the complaint.

13. Admittedly, the complaint was also filed before the Court of ACMM i.e. the same Court where the forgery had been committed. The said Court being the Court of ACMM having powers to mark cases even to subordinate Courts in view of the provisions contained u/s 19 of the Cr.P.C. marked the complaint filed before it to the Court of Metropolitan Magistrate who in view of provisions contained u/s 14 of the Cr.P.C. was to exercise the same powers as would have been exercised by the Court of ACMM inasmuch as the Court of Metropolitan Magistrate is a subordinate Court of Chief Metropolitan Magistrate in a metropolitan city and, thus, on transfer of business performs similar functions as might have been performed by the CMM or ACMM with reference to work assigned to him. It would be appropriate to take note of provisions contained u/s 14, 15, 17 & 19 of Cr.P.C.:

14. Local Jurisdiction of Judicial Magistrates. (1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed u/s 11 or u/s 13 may exercise all or any of the powers with which they may respectively be invested under this Code:

1 [Provided that the court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established].

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

2[(3) Where the local jurisdiction of a Magistrate, appointed u/s 11 or Section 13

or Section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.]

15. Subordination of Judicial Magistrates.

(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the General control of the Session Judge, be subordinate to the Chief Judicial Magistrate.

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.

(1) The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.

(2) The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

19. Subordination of Metropolitan Magistrates.

(1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge, and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

(2) The High Court may, for the purposes of this Code, define the extent of the subordination if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

(3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.

14. In view of the aforesaid the reasoning followed by the learned Addl. Sessions Judge in having come to a conclusion that the complaint was not filed before the same Court and the same Court has not held a preliminary enquiry as is required to be done by the Court in view of Section 340 Cr.P.C. is misconceived for the

simple reason that once the complaint u/s 340 Cr.P.C. was marked to a Metropolitan Magistrate on its administrative side, the said Magistrate was performing the functions of the Court of ACMM in relation to the subject matter of complaint marked to him. It is thereafter he held a preliminary enquiry and once he was satisfied that a case was made out for taking action against the accused persons then he filed the complaint and it is on that basis the summons were issued by the Magistrate concerned. Thus, it is apparent that it is only after being satisfied that it was in the interest of justice and expedient to prosecute the accused persons that the complaint in this case was filed.

15. In view of the aforesaid while allowing the CrI.M.C. 3458/1999 of the petitioner I find no reason to allow his CrI.M.C. 450/1999 as I do not find any specific role assigned to Sh. Om Prakash and Satwant Singh in having committed any offence. Merely because they were present would not make them co-accused as no role as has been assigned to them even in his complaint by the petitioner.

16. Both the petitions are disposed of as stated above and directions are given to the trial Court to proceed further with the complaint which has been registered against the accused Ram Lubhaya Sharma, Head Constable Subegh Singh and S.I. Sunil Kumar and R.D. Behott, the then Assistant Superintendent of Jail, Central Jail (Tihar) under Sections 466/468/471/341/34 IPC.

17. The parties shall appear before the concerned Court on 04.05.2009.

18. Trial Court record be sent back immediately.