

(2012) 04 DEL CK 0225

In the Delhi High Court

Case No : Criminal Rev. P. No. 218 of 2012

Mahabir Prasad Rungta

APPELLANT

Vs

State (Govt. NCT of Delhi)

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216, 227, 362, 397, 401
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 468, 471

Citation : (2012) 04 DEL CK 0225

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

**Advocate : Amit Anand Tiwari with Mr. Nagendra Kasana, for the Appellant;
Fizani Husain, APP, for the Respondent**

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This revision petition is filed u/s 397/401 CrPC read with Section 482 CrPC against the order dated 5.1.2012 of ACMM, Tis Hazari Courts, passed in FIR No. 565/1998, P.S. Prasad Nagar. The petitioner was charge sheeted u/s 409/420/468/471/120B IPC. Vide order dated 27th April, 2011, the learned ACMM ordered for framing of charges and in the last paragraph 9 recorded as under:

9. Accordingly, there is sufficient material to frame charge against all accused for the offence u/s 409 in alternative 420,468/471 IPC. Be posted for appearance of accused persons

In pursuance of the said order, the charges were framed under aforesaid Sections on 13th July, 2011. The petitioner pleaded not guilty to the charges and the case was fixed for complainant's evidence on 8.9.2011. In the mean, an application had been filed by the learned Prosecutor on 01.07.2011 stating that though the summoning order dated 27.4.2011 had disclosed about the conspiracy and active participation of all accused persons but, inadvertently due to typographical mistake, Section 120B IPC remained to be mentioned at the end

of the order. A prayer was made vide this application to add Section 120B IPC in the order dated 27.4.2011. Copy of this application was provided to all the accused persons and the matter was also posted for arguments on this application.

2. Vide the impugned order dated 5.1.2012, the learned ACMM allowed the application of the learned Prosecutor and after discussing the contentions of the counsel of both the parties, in the last paragraph recorded as under:

7. Having considered the above, the application filed by Ld. Special PP stands allowed. The Order dated 27.04.11 stands modified to this extent by inserting Section 120B IPC in para 9 thereof with further corollary change in the Order of charge framed on 13.07.11 by adding Section 120B IPC in Charge

3. It is this order of the ACMM, which is assailed in the present revision petition. The contention of the learned counsel for the petitioner is that once the charges have been framed based on the order of charge and there being no charge framed u/s 120B IPC, the learned ACMM had no power to review her own order and to make addition of Section 120B IPC in the charge. It was submitted that there was a clear bar of making any alteration or review as per Section 362 CrPC. The submission of the learned counsel was that the non-mentioning of Section 120B IPC in the order of charge as also in the charge framed cannot be said due to inadvertent omission or typographical mistake, but the learned ACMM had not chosen to frame charge under this Section and now, in the absence of there being any additional evidence against the petitioner, additional charge could not be framed u/s 120B IPC. Learned counsel placed reliance on the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, .

4. I have heard learned counsel for the petitioner and learned APP for the State and perused the record.

5. With regard to the submission of the learned counsel for the petitioner that the addition of Section 120B IPC would amount to alteration or review of the order by the ACMM and the same was barred u/s 362 CrPC, it may be noted that this submission is apparently misconceived. Section 362 CrPC creates bar in the alteration or review of judgment or final order disposing of a case finally. It was not applicable in the case of alteration or review of the charge. Though, undisputedly, there is no power of review of order of charge, but, Section 216 CrPC specifically empowers the Magistrate to alter or add to any charge at any time before judgment is pronounced. Though as per Section 216 CrPC, the Magistrate enjoys the power of altering or adding of any charge, if the case so requires, but, in the instant case, it could not be said to be either any addition or alteration of the charge or the review of the order of charge. It is seen that the ACMM in Para 8 of her order dated 27.4.2011, whereby the charge was ordered to be framed, had specifically recorded that as per the allegations, the accused persons in pursuance of the conspiracy, induced the complaint to invest huge amount, delayed delivery of shares and accused O.P. Tulsyan obtained the shares

from RIL on the basis of forged authority letters. Though, it was so noted that there was allegation of conspiracy against the accused persons including the petitioner, but the learned ACMM in the last paragraph 9 of the said order, as noted above, did not mention about Section 120B IPC. On the pointing out of learned APP about the inadvertent omission of mention of Section 120B IPC, the learned ACMM heard the counsel for the petitioner and the other accused persons and passed the impugned order. The learned ACMM has observed that a careful perusal of the order dated 24.7.2011 shows that the conspiracy part of the accused persons and their active participation was specifically mentioned in the said order and in this factual situation, it was held to be an omission of mention of Section 120B IPC in the concluding part of the order due to inadvertence and typographical mistake. It was also observed that the intention reflected in the entire order dated 27.4.2011 clearly mentions about the conspiracy and active participation of all accused persons. Learned ACMM rightly recorded that the courts are not to perpetuate any illegality, rather it is their duty to rectify the mistakes and that no capital could be made out of such errors or mistakes. It is noteworthy that the same ACMM, who passed the order on 27.4.2011 and framed charges as noted above, passed the impugned order. She has herself observed about the error of having not mentioned about Section 120B IPC being inadvertent and typographical. I am in entire agreement with her inasmuch as, as is noted above, in para 8 of her order dated 27.4.2011, she had mentioned about the conspiracy of the accused persons in inducing the complainant to invest huge amounts.

6. Further, the propositions of law as regard to consideration or framing of charges as laid down in the case of Prafulla Kumar Samal (*supra*) are not in dispute. There is no doubt that at the stage of consideration of charge u/s 227 CrPC, the court is not to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At this stage, the court has merely to sift the evidence in order to find out whether or not, there is sufficient ground to proceed against the accused. What is required to be seen is whether there is a grave suspicion of commission of offence by the accused person and not that whether the trial would ultimately result in conviction or not. In view of my above discussion, taking from any angle the impugned order could not be faulted firstly, that the impugned order could not be said to be a review order but only correction of a typographical and inadvertent mistake and secondly, that the learned ACMM had the power to alter or to add any charge u/s 216 CrPC and which she was justified in doing so having regard to the allegations of conspiracy against the petitioner and accused persons. In fact, I myself have gone through the complaint and the charge sheet. There are specific allegations of fraudulent conspiracy against the accused persons including the petitioner in inducing the complainants to invest huge amounts and then followed by delayed delivery of shares etc. I do not see any illegality or impropriety in the impugned order of the ACMM. In view of all this, the revision petition being without any merit is hereby dismissed in limine.