

(2009) 08 DEL CK 0074
In the Delhi High Court
Case No : Criminal M.C. No. 1372 of 2009

Mohd. Rizwan

APPELLANT

Vs

State (NCT Govt. of Delhi) and Others

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 356, 379, 397(3)

Citation : (2009) 08 DEL CK 0074

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; Pawan Bahl, APP, for the Respondent

Judgement

V.K. Shali, J.—The petitioner has filed the present petition u/s 482 of Code of Criminal Procedure for setting aside the order dated 18.4.2009 passed by the learned Sessions Judge in Crl. Rev. P. No. 10/2009 and has further prayed for discharge of the accused in FIR No. 456/2005 dated 04.5.2005.

2. I have heard the learned Counsel for the petitioner as well as the learned APP for the State and perused the record.

3. The learned Magistrate vide order dated 31.3.2009 in respect of FIR No. 456/2005 registered at P.S. Welcome directed framing of charge u/s 356/379 IPC against the petitioner herein on the ground that there was a prima facie evidence that the petitioner had committed an offence in question. While passing a detailed and a speaking order, the learned Magistrate had taken a note of the fact that the petitioner had refused to participate in the Test Identification Parade (TIP) despite knowing that his refusal may warrant an adverse inference against him. This was a case where there was an allegation of chain snatching committed by two persons who were riding a Pulsar Motor Cycle somewhere near Seelampur.

4. After direction of framing of the charge, it was framed under the aforesaid two offences on the said date in the case which is presently stated to be fixed for

prosecution.

5. The petitioner feeling aggrieved by the order dated 31.3.2009 directing framing of charge and preferred a revision in case titled Mohd. Rizwan v. The State bearing CrI. Rev. No. 10/2009 which came to be listed before Dr. R.K. Yadav, learned ASJ. The learned ASJ passed a detailed order rejecting the prayer of the petitioner for discharge on the ground that the charges/allegations as stated in the charge sheet and the documents annexed thereto were not groundless and would not warrant the discharge of the accused. The learned ASJ also took note of the fact that the petitioner had refused to participate in the TIP despite having been specifically warned. This being a case of snatching of gold chain lodged by the complainant Smt. Sulakha Thakur, who was waiting at the bus stop near Welcome Colony where the two boys in the same age group with the same build up had committed an offence of snatching. After investigation, the petitioner had refused to participate in the TIP which was taken as a measure of adverse inference against her so as to warrant the discharge of the said accused.

6. The petitioner was still not satisfied and has chosen to file the present petition u/s 482 of Code of Criminal Procedure for being discharged and setting aside the order of the learned Sessions Judge.

7. I have considered the submissions of the learned Counsel for the petitioner, who has contended that the IO in this particular case was apprehended in a case of bribery and therefore, the entire investigation in the present case are tainted. He has also drawn my attention to an order passed by this Court wherein the petitioner has been given liberty to seek an appropriate remedy of initiating action against some police officials. On the basis of this, it has been urged that the petitioner is sought to be falsely implicated when he has nothing to do with the commission of crime.

8. First of all, the present petition u/s 482 of Code of Criminal Procedure filed by the petitioner is in the nature of second revision which is not permissible. This is specifically laid down u/s 397(3). On this short ground itself, the present revision is liable to be dismissed.

9. However, without going into this technical objection of the petition, I have considered both the impugned order dated 18.4.2009 as well as the order passed by the learned Magistrate on 31.3.2009 directing framing of charge, there is absolutely no impropriety, illegality or incorrectness in either of the two orders inasmuch as the charge has to be framed against a person where there is a grave suspicion against a person having committed an offence.

10. In the instant case, the factum that the petitioner is of the same appearance, age and the complainant further refused to participate in the TIP despite having been warranted by the learned Magistrate raises a grave suspicion of his involvement in the commission of offence. Merely because the petitioner has been given the liberty by this Court to prosecute his complaint against the police

official would not entitle or make the allegations in a given case to appear to be groundless. This at best would only be a defence which has to be established during the course of trial. Similar is the defence of the accused that he has been falsely implicated which can be proved by him only during the course of trial and cannot be a ground of pre-empting the trial itself by praying for discharge from the case itself.

11. For the reasons mentioned above, I feel that the petition filed by the petitioner is misconceived apart from being hit by Section 397(3) and therefore, the same is dismissed.