

(2002) 09 DEL CK 0256
In the Delhi High Court
Case No : CRLMM No. 2117 of 2002

Nagender Singh

APPELLANT

Vs

State of N.C.T. of Delhi

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Copyright Act, 1957 — Section 63, 65, 68A

Criminal Procedure Code, 1973 (CrPC) — Section 251, 397(1), 397(2), 397(3), 482

Citation : (2003) CriLJ 1023 : (2002) 101 DLT 134 : (2003) 67 DRJ 195

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : B.D. Batra, for the Appellant; Richa Kapur, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mahmood Ali Khan, J.—This petition is filed u/s 482 of the Criminal Procedure Code for setting aside the order of an Additional Sessions Judge dated 6.5.2002 whereby he had dismissed a criminal revision petition filed by the petitioner against an order of the Metropolitan Magistrate dated 2.4.2002. The Magistrate had declined to release the machinery seized from the possession of the petitioner during the pendency of the proceedings.

2. Briefly stated the facts are that in a complaint filed by a music company the policy registered this case for offence u/s 63, 65 & 68A of the copyright Act and raised the printing press premises of the complainant. The fake inlay card printed by the petitioner on the machines which had infringed the copy rights of the music company complainant were recovered. The police seized 2700 sheets of fake inlay cards of the film Haan Maine Bhi Pyar Kiya, Tumse Achcha Kaun Hai, Tips and Venus music company etc, 500 infringed inlay cards in disc shape of Haan Maine Bhi Pyar Kiya, Tumse Achcha Kaun Hai etc and 495 picture photographs of the film Kabhi Khushi Kabhi Gam, Badal, Raaz, Man Tujhe Salam etc. which had infringed the copyright of the complainant. The petitioner could not produce any authority or license for printing those inlay cards etc. Therefore,

besides the infringing material the two machines (one printing machine and one cutting machine) were seized by the police on 4.3.2002. The case is still at investigation stage.

3. The petitioner moved an application before the Magistrate for release of the abovementioned two machines on superdari to him. The Magistrate dismissed the application holding that the machines could be used for committing the same offence. The matter was pursued before the Additional Sessions Judge but met with the same fate. The Additional Sessions Judge agreed that these machines could be used for committing the same offence i.e. printing of the material which infringed the copyright of the complainant company. The petitioner is aggrieved and has filed this petition.

4. The learned APP has raised a preliminary objection. He has cited the judgment of the Supreme Court in *Rajendra Prasad v. Bashir and Ors.*, 2001 III AD SC 384 and has argued that the petitioner cannot invoke the provision of Section 482 of the Criminal Procedure Code after having availed of the remedy of a revision petition against the order of the learned Magistrate before the Additional Sessions Judge. In the cited judgment the Supreme Court referring to the judgment in *Krishnan and another Vs. Krishnaveni and another*, has laid down that unless special circumstances were shown in the application invoking the jurisdiction of the High Court u/s 482 of the Cr.PC the order impugned was not liable to be set aside. In the judgment of *Krishna and another* (Supra) it was held that though the power of the High Court u/s 482 Cr.P.C. is very wide, yet the same must be exercised sparingly and cautiously. It was further laid down that only in cases where the High Court finds that there was failure of justice, or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may in its discretion prevent the abuse of the process or miscarriage of justice by exercise of the jurisdiction u/s 482 of the Cr.P.C. It was further held in the said judgment "ordinarily when revision has been barred u/s 397(3) of the Code, a person accused/complainant cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 of the Code since it may amount to circumvention of provisions of Section 97(3) or Section 397(2) of the Code.

5. The counsel for the petitioner, on the other hand, argued that the petitioner was a poor man and the two printing and cutting machines were the only source of his livelihood. He further submitted that he has applied for only release of these two machines to him on superdari. However he could not show any special circumstances which could justify resort to the provision of Section 482 of the Cr.PC for setting aside the order of the Additional Sessions Judge passed in the revision petition. He also did not deny that he had invoked the revisional jurisdiction of the Sessions Judge and the Sessions Judge had dismissed it by a speaking order. It can also not be disputed that the two machines are the case property and in the event the case is proved there is possibility of their being confiscated. At the same time Section 251 Cr.P.C. under which the prayer was

made by the petitioner for release of the two printing and cutting machines on superdari provided for only a temporary order intending to preserve the case property pending the trial. The person who is given the custody of the case property is a representative of the court. He holds the property for and on behalf of the court and has to present it as and when required by the court in terms of the superdari nama. Even if this court is inclined to consider the request of the petitioner sympathetically in view of his submission that it was the only source of his livelihood and a case property can be released on superdari during the pendency of a criminal case u/s 251 Cr.P.C., the question still arises whether the prayer made by him can in the peculiarity of the facts be granted by the court u/s 482 Cr.P.C. The law laid down by the Supreme Court in Krishna and another (Supra) and Rajendra Prasad (Supra) is clear and has unambiguously laid down that the High Court will not invoke its inherent supervisory powers vested by Section 482 of the Cr.P.C. unless there are special circumstances. The powers are to be exercised by the High Court cautiously, sparingly and only in rare cases. This court is unable to find any special circumstances which could justify invocation of the power of the court u/s 482 Cr.P.C. even though there is possibility of taking a view different from the view which had been taken by the Metropolitan Magistrate and the Additional Sessions Judge in the order impugned in this petition.

The result of the above discussion is that the petition has no merit. It is dismissed.