
(2011) 02 DEL CK 0277

In the Delhi High Court

Case No : Criminal MC No. 1711 of 2010

Radesh Singh and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 326, 380, 452, 506

Citation : (2011) 1 JCC 642

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Vijay Aggarwal, Prabhjit and Anupama, for the Appellant; Sunil Sharma, APP and N.N. Sarvaria, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—After investigation in FIR No. 248 of 2008, the police filed a charge-sheet keeping the Petitioners herein in Column No. 2 as the persons not charge-sheeted and not arrested. However, vide order dated 10th September 2009, the learned MM took cognizance of the offences and issued summons to all the accused persons for their appearance on 7th January 2010. The said order is assailed by the Petitioners on the ground that the learned MM had not given reasons for summoning them despite the fact that the police had not found evidence against them and not charge-sheeted them. It is submitted that if the learned MM wanted to summon the accused persons, not charge-sheeted by the police, the learned MM was supposed to give reasons. Reliance is place on Neelam Suri v. State 2008 (1) JCC 593 and J.L. Goel v. Rajesh Kumar Jain 2010 (VII) AD Delhi 666.

2. The abovementioned FIR was registered under Sections 326, 452, 506, 380 of IPC on 31st December 2008 on the statement of Kartar Singh. A quarrel had taken place at property bearing number B-222, Sainik Farm on the night intervening 27th and 28th December 2008 as there was a dispute over the ownership of the property. Kartar Singh seems to be a person who was working as servant of Smt. Vineet singh and her mother Inder Kaur. After this quarrel

Kartar Singh was taken to the hospital. Since police was informed about the quarrel, the police also reached hospital. Kartar Singh did not make a statement to the police immediately and it looks that this was deliberate. It was not that Kartar Singh was not in a position to make statement but he refused to make statement and later on a written complaint was given by him to the investigating officer on the basis of which FIR was registered. The Investigating officer of the case while submitting charge-sheet reproduced the written complaint received by him from Kartar Singh after two days of the incident and observed that he visited the spot and searched for the eye witnesses but did not find any eye witness of the incident of quarrel. He interrogated Radesh Singh, Mrs. Reena Verma, Mr. Pooran Chand, Shri Vikram Singh and Rasvinder Singh and learnt that the property bearing number 17, Rajdoot Marg, Chanakaya Puri was subject matter of dispute amongst the legal heirs of Shri Mahinder Singh, who died intestate and there were allegations of fabrication of the Will and dispute about the property was pending before the High Court during which a settlement was arrived at in the High Court between the contending parties. However, since the mutation of the property had not been made despite passing of long time, Radesh Singh filed a claim before the High Court being CS(OS) No. 1938 of 2008 and this claim was pending in the High Court.

3. The property was under the tenancy of US Embassy and it was vacated on 4th September 2008 and it seems that thereafter a tussle over the possession of the property ensued. It has come on record that U.S. Embassy offered to purchase the property and possession of a part of it remained with US Embassy on purchasing a share in the property from one of the owners. On the day of incident, it is alleged, Mrs. Vineet Singh had come to remove a geyser from her part of the property since she had sold it away to US Embassy. The Investigating Officer found that despite allegations of beating by several persons, the MLC of Kartar Singh showed no external injuries. Kartar Singh complained of internal injuries and for that doctors asked for x-ray report, but no signs of internal injuries were found. The Investigating Officer concluded that the allegations made by Kartar Singh of beating him and forcibly snatching the keys were not corroborated since no eye witness was found, no other evidence had come against the Petitioners. He, therefore, kept the Petitioners herein in Column No. 2 and filed challan only in respect of one person.

4. There were no external injuries on the person of Kartar Singh and there was no evidence of internal injuries. Kartar Singh did not make statement immediately after the incident and the complaint was filed in writing by Kartar Singh after deliberations. Under these circumstances, it was incumbent upon the learned MM to spell out for which offence she was taking cognizance qua the Petitioners and how that offence was made out and what was the role played by different offenders. No doubt, a Magistrate takes cognizance of the offence and not of the offenders, but when he sends summons to an offender, he sends summons asking the offender to face trial. The Magistrate must be clear in her mind as to what were the offences made out against the offender and that there

was prima facie evidence against him, more specifically when the police during investigation has not been able to find out evidence of involvement of the offender. Since the Magistrate disagreed with the report of the police and considered that there was evidence to summon the Petitioners and asked them to face trial, she must have spelt out the reasons for summoning the Petitioners placed in Column No. 2. If the police had collected sufficient evidence and forwarded challan in respect of the offenders, the Magistrate may take cognizance of the offence and summon all such offenders for facing trial as named by police on the basis of evidence collected by the police but where the police has not found evidence and the Magistrate considered that there was sufficient evidence, then the Magistrate must pass a speaking order for summoning such offenders against whom, in the opinion of the police there was no evidence.

5. In view of my foregoing discussion, I hereby set aside the order 10th September 2009 passed by learned MM summoning the Petitioners herein and the matter is remanded back to learned MM who shall apply her mind and spell out as to what were the offences committed by the Petitioners in light of evidence collected by the police qua the Petitioners and why it was necessary to summon them to face trial.

The petition stands disposed of in terms of above order. February 21, 2011