
(2007) 01 DEL CK 0130

In the Delhi High Court

Case No : Criminal M.C. 5490 and 5491 of 2005

Ravinder Goel and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 23-01-2007

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 347, 461

Citation : (2007) 1 JCC 465

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Vijay Aggarwal and Rakesh Mukhija, for the Appellant; Daleep K. Dhayani, for Gaurang Kanth for MCD, for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner is aggrieved by a summoning order issued by the learned Metropolitan Magistrate on a complaint preferred u/s 347/461 of the Delhi Municipal Corporation Act.

2. The MCD in its complaint dated 05.11.05 had alleged that the petitioners were guilty of violation of provisions of the Act inasmuch as they had changed the use of the property in question from residential to commercial by using it for an office in the name and style "M/s IACM Computers".

3. The MCD had alleged that the sanctioned use of the premises was only residential. Counsel for the petitioner has relied upon a copy of the summoning order issued in this case on 06.01.03. One of the main grounds urged was that the order was a stereotyped one and issued in a cyclostyled format. Counsel contended that this clearly discloses the utter non-application of mind by the Court. He relied upon the judgment in D.A. Mehta and Ors. v. The Regional Director, ESI. Corporation 1991 (3) crimes 72 and other judgments being Flex Foods Ltd. Vs. Registrar of Companies (Delhi and Haryana), and Charanjeet Vs. DDA and another, .

4. In Charanjeet's case (supra), the Court had held that the trial Court in that

case had fallen into error in issuance of cyclostyle proforma order. Similarly, this Court had noticed that such cyclostyled orders display a cavalier approach to the solemn duty, which the Magistrate has to apply his mind, and also disclose it in an appropriate manner. In D.A. Mehta's case the Court held as follows:

The Magistrate is required to form an opinion that there is sufficient ground for proceeding in the case and for forming that opinion, the Magistrate will be required to apply his mind to the material placed before him and if an order is passed in a printed proforma simply by filling up the gaps for the dates there, it only shows that the magistrate has not studied the material placed before him and has not applied his mind and not formed any opinion about proceeding further in the matter.

5. One of the singular characteristics of a judicial order is that it should disclose application of mind, in the given facts at hand. The respondents have not denied the stereotyped format used by the trial Court with particulars filled at appropriate places, in hand, and signed by the Magistrate. Such an "order" could have passed muster if it was a show-cause notice in administrative proceedings. It cannot, however, stand scrutiny where as in the present case, the consequences are penal in nature.

6. In view of the above reasons, I am of the opinion that the impugned order cannot be sustained. It is accordingly quashed. The matter is remitted to the concerned Magistrate for issuing appropriate orders in accordance with law after considering the materials on record.