

(2008) 01 DEL CK 0144

In the Delhi High Court

Case No : Criminal Rev. P. 680/07 and Criminal M.A. 12869/07

Shashi Kant Singh and Another

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Citation : (2009) 237 ELT 455

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : S.C. Sagar and Pradeep Sherawat, for the Appellant; Pawan Sharma, APP, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The petitioners are aggrieved by the impugned order dated 01.09.2007 in terms whereof the learned Metropolitan Magistrate has directed further investigation into the matter and filing of a supplementary charge-sheet on account of the fact that the trial court has found that no investigation whatsoever against the owner of the premises was done.

2. The petitioners are employees of a transport firm M/s. Speedage Express Cargo Services and one deceased Kailash Chand was sitting on the roof of the container for counting of articles and got electrocuted. The order dated 01.08.2007 shows that in view of the electrical inspection report showing that the current through the building came charged because of there being no earthing of the wires, the proper investigation in that behalf would have been made. The IO sought time to further investigate the matter and filed the supplementary charge-sheet.

3. Learned Counsel for the petitioners seeks to rely upon the judgment of learned Single Judge of this Court in Kulbhushan Sharma v. State 2005 (4) Crimes 619 where it has been held that the Magistrate has no power to order further investigation after he has taken cognizance of the offence in view of the provisions of Section 173(8) of the Code of Criminal Procedure, 1973 (for short,

"Cr.P.C."), which reads as under:

173. Report of the police officer on completion of investigation-

...

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

4. Learned APP, however, submits that the issue sought to be raised by the petitioners is covered by a Full Bench judgment of this Court in *Rajneesh Kumar Singhal v. State (National Capital Territory of Delhi)* 2001 (2) Crimes 346 (FB) where it has been held that the Magistrate is empowered to direct further investigation u/s 173(8) of the Cr.P.C. even in a case where police after investigation filed the challan and the Magistrate takes cognizance of the offence. The rationale for the same is explained in the judgment that restricting the powers of a Magistrate would adversely affect administration of justice.

5. At this stage, when a judgment is pointed out, learned Counsel for the petitioners submits that he is aware of the judgment, but that he seeks to challenge the procedure by which further investigation has to be made.

6. Learned Counsel in this behalf relies upon the judgment of the Apex Court in *Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others*, where it is observed in para 13 as under:

13. In *Ram Lal Narang Vs. State (Delhi Administration)*, it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case.

7. On appreciation of the submissions made by learned Counsel for the parties, it is obvious that the judgment of R.S. Sodhi, J. in Kulbhushan Sharma's case (supra) has been pronounced without considering the Full Bench judgment of this Court in Rajneesh Kumar Singhal's case (supra). The judgment appears to have not been brought to the notice of the learned Single Judge and it was the bounden-duty of the counsels to have done so. The result is that the judgment of the learned Single Judge runs in the teeth of the pronouncement by the Full Bench of this Court. In fact, while the petitioner has referred in the present petition to the judgment of Kulbhushan Sharma's case (supra), it has made no reference to the judgment of Rajneesh Kumar Singhal's case (supra) whereas it was his bounden-duty to have done so. It is the privilege of the counsel to distinguish a judgment after bringing it to the notice of the Court, but the privilege does not extend not to refer to a Full Bench judgment of the Court and instead refer to a Single Bench judgment of this Court, which is contrary to the Full Bench judgment.

8. Be that as it may, the plea of learned Counsel for the petitioners is ex facie liable to be rejected in view of the pronouncement of the Full Bench of this Court in Rajneesh Kumar Singhal's case (supra).

9. Insofar as the second limb of the argument of the learned Counsel for the petitioner, which arose on the Full Bench judgment being pointed out in Court, the same is predicated on the absence of following the procedure as discussed in Hasambhai Valibhai Qureshi's case (supra). In the said judgment, all that the Court has stated is that it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. The present case is not of that category at all and is one where the Court is of the opinion that the police has failed to carry out the task assigned to it in terms of the proper investigation. The impugned order records the reason for the Court to form such an opinion and the IO took time to carry out the further investigation and filed the supplementary charge- sheet.

10. I am of the considered view that the present petition is not only without any merits but also amounts to an abuse of the process of the Court and is accordingly dismissed with costs quantified at Rs. 10,000/- to be deposited with Delhi High Court Legal Services Committee.

CRL. M.A. 12869/2007

The application does not survive for consideration and is disposed of.