
(2012) 07 DEL CK 0366

In the Delhi High Court

Case No : Criminal Rev. P. No. 360 of 2012

Sunil Arora and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 239, 240, 397, 401
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 34, 452, 506

Citation : (2012) 192 DLT 88

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : O.P. Gulabani, for the Appellant; Navin Sharma, APP., for the Respondent

Judgement

Pratibha Rani, J.

Crl. M.A. No. 12221/2012 (delay)

1. This is an application u/s 5 of the Limitation Act filed by the petitioners seeking condonation of delay in filing the present revision petition. For

the reasons stated in the application, the same is allowed and the delay in filing the revision petition is condoned.

2. Application stands disposed of.

Crl. Rev. P. 360/2012 and Crl. M.A. No. 12222/2012

3. By this revision petition filed u/s 397 read with Sections 401 and 482, Cr.P.C., the petitioners seek setting aside the order dated 20.4.2010

passed by the learned MM in case FIR No. 433/2008 thereby framing charge against the petitioners under Sections 452 /506 /34, IPC.

4. The grievance of the petitioners is that in the above case the learned MM has

ordered for framing of charge under Sections 452 /506 /34, IPC

without even providing any legal aid to the petitioners and without giving an opportunity of being heard before passing the order framing the charge

for committing the alleged offences under Sections 452 /506 /34, IPC.

5. Learned Counsel for the petitioners has referred to the proceedings dated 20.4.2010 in this regard which is reproduced as under:

20.4.2010

File received from transfer

Be checked and registered.

Present: APP for State.

Accused on bail.

Charge framed under Sections 452 /506 /34, IPC accordingly.

Case is adjourned for PE on 17.8.2010.

sd/-

MM/Delhi

20/04/10.

6. Learned APR for the State submits that since the proceedings dated 20.4.2010 do not reflect that before passing the order framing charge

under the aforesaid sections, any opportunity of being heard has been given either to the State or to the accused/petitioners, the impugned order is

liable to be set aside and the matter may be remanded back to the Trial Court for hearing on the point of charge and pass appropriate orders, after

giving an opportunity to the accused persons and State.

7. I have heard learned Counsel for the petitioners and APR for the State.

8. In Hussain Julfikar Ali (Mohd.) v. State (Govt. of NCT) Delhi, I (2012) CCR 189 (SC) : I (2012) DLT (CrI.) 253 (SC) : I (2012) SLT 329 :

2012 IAD (CRI.) (SC) 401, it was held that every person has a right to a fair trial by a competent Court in the spirit of the right to life and

personal liberty. The object and purpose of providing competent legal aid to undefended and unrepresented accused persons is to see that the

accused gets free and fair, just and reasonable trial of charge in a criminal case.

9. The Apex Court in the decision of Minakshi Bala Vs. Sudhir Kumar and Others, , observed that:

6. Having regard to the fact that the offences, for which charge sheet was submitted in the instant case, and cognizance taken, were triable as a

warrant case the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under

the above sections, the Magistrate is first required to consider the police report and the documents sent with it u/s 173, Cr.P.C. and examine the

accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination

and hearing the Magistrate finds the charge groundless, he has to discharge the accused in terms of Section 239, Cr.P.C.; conversely, if he finds

that there is ground for presuming that the accused has committed an offence triable by him, he has to frame a charge in terms of Section 240,

Cr.P.C.

10. At the stage of framing of charges, the right of accused to be heard has been recognized beyond the pale of any doubt, as reported in State

of Orissa Vs. Debendra Nath Padhi, .

11. It is apparent from the proceedings of the learned Trial Court that when the case was listed for framing of charge, the Court after marking the

presence of the parties passed the impugned order framing charge and did not even care to ask them whether they are in a position to engage a

Counsel to defend them and if not, to ensure that legal aid is provided by appointing an Advocate to defend them. It was the mandatory duty of the

Court to ensure free and fair trial after giving an opportunity of being heard.

12. The perusal of TCR reveals that the accused persons were not represented through any Counsel right from the stage of filing of the charge

sheet i.e. 6.5.2009 and on the date when the charge was framed, which was passed in a very mechanical manner and without ensuring to provide

legal aid to them. Since the petitioners were not in a position to engage a Counsel and did not get the opportunity of being heard, the impugned

order dated 20.4.2010 framing charge against the petitioners is hereby set aside and the matter is remanded back to the Trial Court with a

direction to pass appropriate orders after giving the parties an opportunity of being heard. Petition stands disposed of in the above terms.