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**(2011) 04 DEL CK 0043**  
**In the Delhi High Court**  
**Case No : Criminal M.C. No. 2180 of 2004**

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| Virender | Vs | APPELLANT  |
| State    |    | RESPONDENT |

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**Date of Decision :** 20-04-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 190  
Penal Code, 1860 (IPC) — Section 193, 308, 34, 409

**Citation :** (2011) 04 DEL CK 0043

**Hon'ble Judges :** V.K. Shali, J

**Bench :** Single Bench

**Advocate :** Party in Person, for the Appellant; M.N. Dudeja, APP, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.K. Shali, J.—This is a petition filed by the Petitioner for quashing of FIR No. 401/2004 registered u/s 409, P.S. Tilak Marg.

2. Briefly stated the facts of the case are that an FIR bearing No. 610/2000 u/s 308/34 IPC was registered on 9.7.2000 by P.S. Dabri against some accused persons. The investigation of the case were handed over to the present Petitioner. It is alleged by the present Petitioner, that an accused by the name of Bharat was arrested by him in respect of the aforesaid FIR No. 610/2000 on 9.7.2000. In pursuance to the disclosure statement of the said accused i.e. Bharat, a weapon of offence which was a Darati was seized and the same is alleged to have been deposited with the Malkhana of P.S. Dabri.

3. After investigation, the charge sheet was filed and the case was sent for trial to the Court of Sh. V.P. Vaish, the then Additional Sessions Judge. During the course of trial before the learned Additional Sessions Judge, it transpired that the weapon of offence was not at all deposited with the Malkhana. This was brought on judicial record by PW-9 who has stated that no case property was deposited in the Malkhana as per entry in register No. 19, pertaining to the said FIR. Further,

Inspector Satya Pal Yadav, the then Additional SHO, P.S. Dabri also confirmed the said fact

4. On account of these statements of the witnesses during the course of trial, the learned Additional Sessions Judge made a written complaint to the P.S. Tilak Marg against the present Petitioner on the basis of which an FIR No. 401/2004 was registered u/s 409 IPC by P.S. Tilak Marg.

5. The Petitioner filed two anticipatory bail applications before the learned Sessions Judge, Patiala House Courts, but both these applications were rejected vide order dated 19.8.2004 and 24.8.2004. After rejection of both these applications for grant of anticipatory bail, the Petitioner filed the present petition for quashing of FIR itself.

6. On the very first date, while issuing notice, this Court had stayed the investigation vide order dated 2.9.2004, which was modified on 8.10.2004, inasmuch as, it was directed that the investigation may continue but the Petitioner may not be arrested till the next date. The said interim order has continued till date.

7. I have heard the learned Counsel for the Petitioner as well as the learned Counsel for the State and have perused the status report. I have gone through the record also.

8. It has been contended by the learned Counsel for the Petitioner that the weapon of offence was deposited by the Petitioner with the Malkhana after seizure and if the same has been misplaced, the Petitioner cannot be held responsible for the same. The second objection, which has been raised by the learned Counsel for the Petitioner is with regard to the modality in which the FIR was registered against the Petitioner. It was contended by the learned Counsel that the learned Sessions Judge ought not to have lodged a complaint to the P.S. Tilak Marg for registration of an FIR as he could not have taken the cognizance of the same u/s 190 Code of Criminal Procedure and on the contrary he ought to have lodged a complaint with the CMM/ACMM, who would have marked that complaint to the Ilaka Magistrate, whereupon investigation could have been directed and cognizance could have been taken. This submission is made by the learned Counsel on the assumption that the offence of the Petitioner is purported to have been committed during the course of judicial proceeding and therefore, the procedure for taking cognizance u/s 190 Code of Criminal Procedure has to be exercised keeping in view Section 193 IPC which deals with the offence of perjury during the course of judicial proceeding.

9. I have carefully considered the respective submissions advanced before this Court. The law regarding quashing of FIR has been enunciated way back in 1992 in case titled State of Haryana and others Vs. Ch. Bhajan Lal and others, . The said pronouncement of law has been repeatedly reiterated by the Apex Court in the subsequent judgments. It has been clearly laid down in the case of Bhajan Lal (supra) that the power to quash the proceedings have to be exercised very

sparingly and in the rarest of the rare cases. Seven illustrative contingencies have been given in the said judgment, where FIR can be quashed. The Petitioner has to show that in which of the contingency his case is covered, so as to get the FIR quashed.

10. The Petitioner has not been able to satisfy, the availability of even a single contingency which may warrant the quashing of the FIR. On the contrary, a bare perusal of the FIR clearly show that the Petitioner had admittedly in the capacity of IO seized the weapon of offence and prepared a seizure memo and after having done so, the onus was on him to show as to how it was dealt with and if it is not produced why the same was not produced before the Court and the reasons thereof. This has not been done by him before the Trial Court or even at this stage during the course of hearing of these proceedings.

11. The contention of the learned Counsel for the Petitioner is that the Petitioner had deposited the said weapon of offence with the Malkhana, is a disputed question of fact to be adjudicated and appreciated by the Trial Court only after the parties have adduced their evidence. It has already come in evidence by way of the statement of witness in the case where the weapon of offence was seized that it has not been deposited in Court. Therefore, this contention of the Petitioner does not have any merit.

12. So far as the second contention with regard to the modality of lodging of an FIR or taking of cognizance by the learned Sessions Judge is concerned, I do not agree with the submissions advanced by the learned Counsel. By making a complaint to the SHO of P.S. Tilak Marg for registration of an offence u/s 409 on account of breach of trust by a public servant in respect of a valuable property, the learned Sessions Judge has certainly not taken cognizance of the offence. He acted in the capacity of an informant and moreover, being a high public servant, he was under an obligation to lodge a report against the Petitioner for the offence of breach of trust inasmuch as the weapon of offence which was admittedly seized by the Petitioner was not produced during the course of trial and thereby this would have helped the accused in going scot-free. It is very well possible that this might have been done deliberately by the Petitioner with a view to help the accused persons.

13. So far as the lodging of the complaint by the learned Sessions Judge with the learned AACMM/CMM and then he in turn marking the same to the Ilaka Magistrate, the latter directing investigation or taking of cognizance is concerned, I do not feel that there was anything wrong muchless it being illegal to lodge a report with the SHO of police station Tilak Marg. Admittedly in the present case, the offence has not been committed during the course of judicial proceedings. The offence relates to the stage where the weapon of offence was seized by the present Petitioner and not deposited with the Malkhana and thus prima facie an offence of breach of trust was committed by a public servant.

14. It is worthwhile to reproduce here Section 409 of IPC, which reads as under:

409. Criminal breach of trust by public servant, or by banker, merchant or agent.- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

15. A perusal of the aforesaid Section would clearly show that prima facie the learned Sessions Judge had absolutely no other option but to lodge an FIR in view of the facts and circumstances of the case -which he has rightly done.

16. For the reasons mentioned above, I am of the considered opinion that there is absolutely no ground much less justification for quashing the FIR against the present Petitioner. Accordingly, the petition is dismissed.

17. Interim order dated 08.10.2004 stands vacated.