

Ashok Bhadauria vs.state

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Court : Delhi

Decided On : Dec-15-2016

Appellant : Ashok Bhadauria

Respondent : State

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision :
December 15th, 2016 CRL.REV.P. 274/2007 ASHOK BHADAURIA

... Petitioner

Through Mr.Kirti Uppal, Sr.Adv. with and Chaudhary Mr.S.P.S. Mr.Harsh Kumar,
Advs. versus STATE Through Mr.Panna Lal Sharma, APP with SI Bhanwar Singh,
Sec-V/EOW. Respondent WITH + CRL.REV.P. 347/2007 C.P.YADAV & ANR.
.....

... Petitioner

Through Mr.Kirti Uppal, Sr.Adv. with and Chaudhary Mr.S.P.S. Mr.Harsh Kumar,
Advs. versus STATE Through Mr.Panna Lal Sharma, APP with SI Bhanwar Singh,
Sec-V/EOW. Respondent AND + CRL.REV.P. 387/2007 KISHAN LAL
NAGPAL & ORS.

... Petitioner

Through Mr.Kirti Uppal, Sr.Adv. with and Chaudhary Mr.S.P.S. Mr.Harsh Kumar,
Advs. versus Crl.Rev.P.274/07, 3

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Page 1 of 6 STATE Through Mr.Panna Lal Sharma, APP with SI Bhanwar Singh, Sec-V/EOW. Respondent CORAM: HON'BLE MR. JUSTICE P.S.TEJI P.S.TEJI, J1 A common order on charge dated 02.03.2007 and the charge framed dated 02.03.2007 has been challenged against the petitioners in these three petitions, therefore, all these petitions are decided together.

2. Aggrieved by the common order on charge dated 02.03.2007 and the charge framed dated 02.03.2007 under Sections 420/467/ 468/448/120-B/109 IPC, the present revision petitions have been preferred by the petitioners. In the order dated 02.03.2007, it was observed by the trial court that At this stage, detail discussion is not required..... 3. The facts, in brief, are that Mr.Tajun K. Sahgal made a complaint to the police that he being a partner of M/s Magnum Corporation took on lease premises bearing No.D-4, Defence Colony, New Delhi from Major Pavinder Ahluwalia for a period of two years w.e.f. 25.05.1994. On 25.05.1996, he received a telephonic call from Mrs.Anila Ahluwalia inquiring as to why the Crl.Rev.P.274/07, 3

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Page 2 of 6 complainant had illegally handed over the possession of the premises to a third person. On inquiry, the complainant came to know that his partner Rakesh Thapar had illegally given the leased premises to one Manish Jain. On the basis of the said complaint, FIR No.392/1996, under Sections 406/408/420 IPC, Police Station Defence Colony was registered.

4. During investigation, the police found the involvement of the petitioners/accused persons including co-accused Rakesh Thapar and after completion of investigation, charge sheet was filed in the Court. The trial court vide impugned order dated 02.03.2007 ordered to frame charge under Sections 420/467/468/448/120-B/109 IPC and framed charges thereunder against the accused persons to which they pleaded not guilty.

5. Upon hearing the arguments advanced by the learned counsel for the parties, this Court has gone through the material available on record.

6. Arguments advanced by the learned Senior Counsel for the petitioners are that the trial court has not given any reasoning finding the prima facie guilt of the petitioners which led to the framing of charge against them. It was further argued that neither the allegations nor the reasoning having concurrence with the same have been recorded by the trial court while passing the order on CrI.Rev.P.274/07, 3

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Page 3 of 6 charge. It was further argued that the order under challenge is a non-speaking order.

7. Section 227 of the Cr.P.C. provides for discharge of an accused in a case where if upon consideration of the record of the case and the documents submitted therewith and after hearing the submission of the accused and the prosecution, the Judge considers that there is no sufficient ground for proceeding against the accused. When no case for discharge of an accused as provided under Section 227 of the Cr.P.C. is made out, then the court is to frame the charge as provided in Section 228 of the Cr.P.C.

8. In the case of P. Vijayan v. State of Kerala AIR 2010 SC663 the Honble Apex Court observed that at the time of framing charge, the Judge is not a mere Post Office to frame the charge, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or documents produced before the court which prima facie disclosed that there were suspicious circumstances against the accused.

9. In the case of Sunil Kumar Jha v. State of Bihar (1997) 2 Crimes 131 (Pat), it was observed that the responsibility of framing the charge is that of the court and it has to judicially consider the CrI.Rev.P.274/07, 3

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Page 4 of 6 question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution.

10. Perusal of the impugned order shows that the learned trial court did not consider it necessary to discuss the merits of the case. It has been recorded in the impugned order that as far as the individual allegations and role played by the accused are being mentioned in detail in charge, therefore there is no need to repeat the same in the order. The learned trial court straightway recorded the conclusion that the accused are liable to be charged under Sections 420/467/468/448/ 120-B/109 IPC.

11. The learned MM did not discuss the material on record while deciding to frame charge. The order on charge must atleast contain the materials on the basis of which prima facie view is made out that the accused has committed the alleged offence as provided in Sections 212 and 213 Cr.P.C. in relation to each of the accused. The non-mentioning of material at the time of passing the order on charge leads to un-sustainability of the order in the eyes of the law.

12. It is a settled law that the Court at the time of framing the charge is required to discuss the material on the record to show its application of mind to reach to the conclusion of sufficiency of material to frame the charge. The Court may not write the lengthy order describing CrI.Rev.P.274/07, 3

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Page 5 of 6 the entire material mentioned in the charge sheet but there must be something on the face of the order from where it could be gauged that there is application of mind but the order is contrary to the above mentioned ratio of law.

13. This Court is of the considered opinion that the learned Trial Judge need to exercise again jurisdiction to pass the fresh reasoned order.

14. The non-sustainability of the order on charge culminates into acceptance of these revision petitions and setting aside the order on charge and charge framed by the trial court. As a result, the present revision petitions are allowed with the observation that the trial court shall pass fresh order, after giving an opportunity of hearing to both the sides, keeping in view the observations made above.

15. With the above observations, the order on charge as well as charge framed dated 02.03.2007 is hereby set aside as not sustainable with the directions to the

trial court to pass order afresh. All the revision petitions are disposed of accordingly.

16. Any pending application is also disposed of.

17. A copy of the order be sent to the trial court concerned. DECEMBER15
2016/dd (P.S.TEJI) JUDGE Crl.Rev.P.274/07, 3
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