

S.K. Bhalla Vs. State and ors.

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Court : Delhi

Decided On : Oct-21-1994

Reported in : 1994(31)DRJ495

Judge : Dalveer Bhandari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 218 of 1994

Appellant : S.K. Bhalla

Respondent : State and ors.

Advocate for Pet/Ap. : B.R. Handa,; Neelam Nishtantara,; A.K. Singh and;

Judgement :

Dalveer Bhandari, J.

(1) This petition has been filed under Section 482 of the Code of Criminal Procedure, for quashing order dated 27th November, 1993 passed by learned Additional Sessions Judge, in Cr.R-12/93, Who affirmed the order dated 13th July, 1993 passed by Mr. V.K. Jain, Metropolitan Magistrate.

(2) In order to appreciate the controversy involved in this case, it would be necessary to make reference of the orders which have been passed by the

learned Metropolitan Magistrate, in this case.

(3) On 17th February, 1993, Ms. Anu Malhotra, Metropolitan Magistrate passed the following order:

'ABSENCE of the said accused is condoned for the day. The statement of C.W.5 Hakim Mohd. s/o Sham Khas has been recorded and, thus, in view of his statement as C.W.5, the offence u/s 420 Ipc read with Section 120B, Indian Penal Code against the accused persons is compounded u/s 320 Criminal Procedure Code . quashed. Hakim Mohd. The witnesses Lila Ram and jabbar Khan are present but they are not summoned witnesses, nor have they brought any proof of their identity and to come for the production of the same on the date 19.4.93.'

(4) Mr. V.K. Jain. learned Metropolitan Magistrate passed the following order on 13th July, 1994:

'THE 3rd accused is stated to be sick and is exempted from personal appearance for today. Statement of Lila Kam and Jabbar Khan who have been brought their passports recorded. They are directed to submit photo copies of their passports for being placed on record. Permission is given to compound the offence u/s 420 IPC. In view of the statements of jabbar Khan and Lila Ram recorded today as well as statement of other persons recorded earlier, all the accused are acquitted of the offence u/s 420 I PC. Accused persons will, however, have to undergo trial for the offence u/s 120B, I PC. which by itself is punishable as a substantive offence and which is not compoundable. To come up turn Pe on the offence u/s 120B, I PC on 19th day of October, 1993. Accused Major All has moved an application for permission to go abroad. Heard. As the case is being fixed turn evidence, the application is rejected.'

(5) Against the order passed by Mr. V.K. Jain, a revision petition was preferred before the Additional Sessions Judge, who affirm end the orders passed by Mr. V.K. Jain.

(6) Mr. B. R. Handa, learned counsel for the petitioner submits that orders dated 17.2.1993 passed by Ms. Anu Malhotra. Metropolitan Magistrate, could not be

reviewed by another Magistrate on 13.7.1993. Aggrieved by that order, the petitioner preferred revision petition before the Additional Sessions Judge. He further submitted that the learned Additional Sessions Judge has erroneously affirmed the order dated 13.7.93 of Mr. V.K. Jain, Metropolitan Magistrate.

(7) It is not necessary to dictate on the propriety and legality of the order of the learned Metropolitan Magistrate dated 17th February, 1993 by which she compounded the offence u/s 120B, Indian Penal Code which is not compoundable with or without the permission of the court u/s 320 of the Code of Criminal Procedure.

(8) The real question of substance which arises in this case is -when the offence u/s 420, Tpc has been compounded and accused have been acquitted, in that event, whether any useful purpose would be served in continuing the trial u/s 120B, Indian Penal Code, particularly, when parties have compromised the entire matter and filed affidavits to that effect in court.

(9) I have heard learned counsel for the parties. Looking to the totality of facts and circumstances of this case, in the larger interest of justice. I set aside the order passed by the Additional Sessions Judge dated 27.11.1993 and direct that the proceedings arising out of Fir NO.976-/85 u/s 120B, II'C P.S. Connaught Place and proceedings pending before the concerned court are quashed. The petition is accordingly disposed of.