

Brijender Singh Deshwal Vs. State

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Court : Delhi

Decided On : Aug-11-2003

Reported in : 2003VIIIAD(Delhi)186; 107(2003)DLT7; 2004(72)DRJ474

Judge : J.D. Kapoor, J.

Acts : Indian Penal Code (IPC) - Sections 409; Indian Penal Code (IPC) - Sections 279 and 337

Appeal No. : Crl.M. (M) No. 1413 of 2002

Appellant : Brijender Singh Deshwal

Respondent : State

Advocate for Def. : Arvind Gupta, APP

Advocate for Pet/Ap. : Sidharth Luthra and; Smriti Sinha, Advs

Disposition : Petition allowed

Judgement :

J.D. Kapoor, J.

1. This petition reflects the obsessive approach by a Court in forcing the Investigating Agency to abide by the wish of the Court in filing a charge-sheet inspire of the fact that I.O. after I.O. submitted before the Court that no case was

made out against the petitioner. Such an approach by the Court does not augur well for administration of justice as Courts have over the period been advised not to interfere with and traverse into the functioning of Investigating Agency and its domain. Concerned Court is of Chief Metropolitan Magistrate. Initiator was Sh. Prem Kumar and precursor was Sh. R.K. Gauba.

2. The petitioner being the Investigating Officer has been booked for an offence punishable under Section 409, IPC on account of having failed to produce the police file relating to FIR No. 155/89 under Sections 279/337, IPC i.e. causing simple and minor injuries due to rash or negligent driving. The facts leading to the registration of the case are, in brief, as under:

3. An FIR No. 155/89 under Sections 279/337, IPC was registered at Police Station Desh Bandhu Gupta Road and investigated by the petitioner. During investigation the complainant being the registered owner of the vehicle got it released on Superdari of Rs. 1,20,000/-. On 1st February, 1996 the said registered owner filed an application before Sh. Prem Kumar, CMM, Delhi on 20th May, 1996 for cancellation of Superdari. Pursuant to the said application CMM directed the IO to produce the police file. On his failure to produce the said file the learned CMM vide order dated 30th July, 1996 directed the SHO Police Station Desh Bandhu Gupta Road to register a proper case either for loss of file or investigate the same and produce the report before him on 9.9.1996.

4. On receiving this direction the SHO, Desh Bandhu Gupta Road registered a case and entrusted it to SI Ram Chander for investigation. However, during the investigation no material appeared for filing the charge-sheet and consequently, cancellation report was filed on 15th July, 1997. However, the learned CMM felt dissatisfied with the cancellation report and ordered for further investigation by the Crime Branch. Again the Crime Branch did not find anything and filed a report for cancellation. This report was filed by none else but by an officer of the rank of Asstt. Commissioner of Police.

5. The successor-learned CMM Sh. R.K. Gauba also followed the foot step of his predecessor and went a step further by directing that the matter be investigated by the Deputy Commissioner of Police (Vig.). When DCP (Vig.) expressed his inability

to investigate the matter on the premise that he has no power to investigate, the learned CMM vide order dated 3rd July, 1999 directed the DCP to investigate the matter. Pursuant to this direction DCP entrusted the investigation to the ACP. Ultimately, it appears that ACP succumbed to the wishes of the CMM and filed the charge-sheet against the petitioner. It is pertinent to mention here that during investigation it transpired that the record of police file was as per rules destroyed under the order of the Deputy Commissioner of Police. It is not understandable as to what the learned CMM wanted to see and what axe the petitioner was to grind in not producing the said file as the matter related only to Superdari order. It was just a matter of official procedure that such files were ordered to be destroyed after a certain period.

6. At the outset, it may be pointed out that the learned CMM had no authority to order for an inquiry by the DCP when it was brought to his notice that he under the procedure and law has no authority to investigate such matter. What was expected from the learned CMM was to deal with the application. It could have been disposed of without the police file.

7. Jurisdiction of the Court commences only when final report is filed under Section 173, Cr.P.C. Till then the field remains occupied by police i.e. Investigating Agency and not by the Court. Crusader like approach by usurping the functions of police on the part of the Court does not augur well for administration of justice. Having seen the report of his predecessors, ACP appears to have surrendered to the over zealousness of the CMM in filing the charge-sheet against the I.O. or put an end to the long and strenuous exercise in booking the I.O. for some or the other offence. If at all there was any negligence or delinquency on the part of the I.O. in producing the police file which had though been destroyed, his superiors should have been asked to proceed departmentally against him. In the face of the fact that the police file had been destroyed under the order of DCP the matter even otherwise should have been closed there and then.

8. Even the facts referred in the charge-sheet filed by the ACP do not bring out an iota of ingredients of offence punishable under Section 409 of the IPC. To make out a case under Section 409 the person should be entrusted with property or with

any dominion over property in his capacity of a public servant and should commit criminal breach of trust in respect of that property. Criminal breach of trust has been defined in Section 405, IPC. According to this, the person entrusted with property should dishonestly misappropriate or convert to his own use or dishonestly use it or dispose of it in violation of any direction of law. Non-production of police file by I.O. does not come within the mischief of dishonestly misappropriating a property or converting it to one's use or dishonestly using or disposing of element of dishonest intention is the essential ingredient and that is utterly wanting in the instant case.

9. For the foregoing reasons I find that the impugned order suffers from inherent infirmity as well illegality and is not sustainable in the eyes of law. In the result, the petition is allowed. The impugned order is set aside. The FIR No. 401/ 96 and all subsequent proceedings arising there from are quashed.

10. Petition is disposed of.