

Sant Kumar Singh Vs. State

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Court : Delhi

Decided On : May-27-2005

Reported in : 2005CriLJ4760; 123(2005)DLT136; 2005(84)DRJ140

Judge : H.R. Malhotra, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 251, 279 and 304A; Criminal Law; [Constitution of India](#)

Appeal No. : Crl. R.P. No. 230 of 2005

Appellant : Sant Kumar Singh

Respondent : State

Advocate for Def. : V.K. Malik Adv.

Advocate for Pet/Ap. : Ashutosh Adv

Judgement :

H.R. Malhotra, J.

1. This Criminal Revision Petition is to assail the impugned order dated 28th March, 2005 passed by the Metropolitan Magistrate whereby the Metropolitan Magistrate while giving notice to the petitioner under Section 251 of code of criminal procedure, for commission of offence under Section 279/304A volleyed as

many as seven questions to him to find out if he was driving the offending vehicle on 7th June, 2004 at 9.30 P.M. and if so, whether he was driving the vehicle in rash and negligent manner and whether he was responsible for causing the death of one Sanjeev Kumar Sehgal because of driving in rash and negligent manner.

2. The Metropolitan Magistrate by invoking the Provisions of Section 251 Cr.P.C. found that the petitioner accused was under legal obligations to disclose his defense once he pleaded not guilty to the notice.

3. The petitioner being aggrieved by the impugned order has filed the instant revision petition.

4. Chapter XX deals with the trial of summons cases by the Magistrate. First Section of this Chapter is 251. The title of this Section is 'Substance of Accusation to be stated' which reads as under:

SUBSTANCE OF ACCUSATION TO BE STATED:

'When in a summons case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defense to make but it shall not be necessary to frame a formal charge.'

5. Cardinal principles of criminal law is that the accused is presumed to be innocent unless proved guilty. In this legal back ground, the accused when chooses not to plead guilty cannot be asked to open up his case first. It is the prosecution who is to open up the case. This is so stated in Section 251. In the case in hand, the Metropolitan Magistrate seems to have burdened the petitioner accused with the onus to prove his innocence by putting so many questions to him by taking the aid of Section 251.

6. The plain reading of Section 251 indicates that in case the accused does not plead guilty the Magistrate has simply to ask the accused if he has any defense to make and nothing beyond that. The Magistrate cannot at this initial stage compel the accused to disclose his defense in details particularly when the accused has right to remain silence as guaranteed to him under the [Constitution of India](#). If the

accused is asked to disclose his defense before the prosecution open up its case it shall be contrary to the basic fiber of the criminal law which presumes innocence of the accused unless proved otherwise.

7. In view of what has been disclosed in the following paragraph the order passed by the Metropolitan Magistrate cannot be sustained in the eyes of law as it would not only cause prejudice to the petitioner accused by compelling him to disclose his defense when he was not required to do so but also will be contrary to the basic principles of criminal justice. therefore, the impugned order is liable to be set aside. The same is set aside resulting in acceptance of the Criminal Revision Petition. The case is remanded back to the Metropolitan Magistrate with the directions to frame the notice afresh asking the petitioner if he was to plead guilty and if he answers in negative then ask the petitioner if he had any defense to make and would not compel the petitioner to elaborate his defense further but only take his answer either in affirmative or in negative as the petitioner chooses to give.

8. The petitioner is directed to appear before the trial court on 12th September, 2005.

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