

N.S. Kapoor Vs. State

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Court : Delhi

Decided On : Mar-13-1995

Reported in : 58(1995)DLT390

Judge : Vijender Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 204 and 397; Indian Penal Code (IPC) - Sections 34, 120B, 406, 407, 408 and 409

Appeal No. : Criminal Revision No. 33 of 1984

Appellant : N.S. Kapoor

Respondent : State

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Jatinder Sethi, Adv

Judgement :

Mr. Vijender Jain, J.

1. This is a Revision Petition the order of the learned Metropolitan Magistrate, Delhi dated 17.1.1984.

2. Briefly sating the facts of this case are that the present petitioner was a member of the Governing Body of Shri Guru Teg Bahadur 'Khasla College Delhi. The said

College, on account of the option sought by the University of Delhi, wanted to shift its building from Dev Nagar, where it was located, to the University Campus. According to the petitioner, after obtaining grant from the University Grants Commission for the construction of new building inside the University Campus, the Governing Body of the said College constituted a Committee of four persons i.e., Shri G.S. Randhawa, the then Principal of the College, Shri Gurbaksh Singh, Honorary Treasurer of the College, Shri Daljit Singh, In-charge Building affairs and Shri Jaswant Singh, Engineer. Shri Daljit Singh and Shri Jaswant Singh are since dead. The petitioner filed a complaint against the said four persons under Sections 408/409/406/34/120-B/409 IPC dated 10.1.1979 inter alias alleging that large funds which were put at the disposal of the Management of the said College was misappropriated by the said four persons, who were solely responsible for carrying out the building activities of the new building of the College. In support of his complaint, the petitioner examined himself, Shri Sajjan Singh Sethi, the then Chairman of the Governing Body, and six others witnesses. The learned Metropolitan Magistrate vide his order dated 17.1.1984 dismissed the complaint of the petitioner. Aggrieved by the said order of dismissal of the complaint, the petitioner preferred the present Revision Petition in this Court.

3. Mr. Jatinder Sethi, learned Counsel for the petitioner, has vehemently argued that from the basis of the evidence on record and the voluminous documents filed by the petitioner before the learned Metropolitan Magistrate, the learned Metropolitan Magistrate had abdicated his jurisdiction by not issuing process to common the aforesaid accused persons. Mr. Sethi has argued that in the impugned order the learned Metropolitan Magistrate has come to a finding 'No doubt the absence of receipts and non-signing of vouchers points towards a grave irregularity in the maintenance of accounts, but unless the payees deny the receipt of their amounts, it cannot be said that the aforesaid four persons have dishonestly misappropriated the amounts accounted as paid.' Yet at another place in the impugned order, the learned Metropolitan Magistrate has stated 'The complainant has also alleged that the measurement contains an entry relating to the dome whereas no dome has been constructed on the principal's residence.'

4. The learned Metropolitan Magistrate has dealt this aspect in the following manner:--

'It would mean that excessive measurements were shown and excessive payments were made to the contractor but it does not got to prove that any money was misappropriated in relation thereto.'

5. In the concluding para-5 of the impugned order the Magistrate held that grave irregularities in maintenance of accounts about the payments purported to have been made for the construction of alleged building has been done but such irregularities did not make out a case for criminal trial through the complaint of the petitioner.

6. Section 204 of the Code of Criminal Procedure (in short 'Cr.P.C') postulates that a Magistrate taking cognizance of a complaint has to apply its mind to formulate a prima facie opinion as to the offence alleged by the complainant. At that stage, the Magistrate is not required to go into the minor detail of the allegation alleged by the complainant. .It does not stand to reason as to why, when the Metropolitan Magistrate was himself of the opinion that certain grave irregularities have been committed, the resolution of the Governing Body constituting a Committee of aforesaid four persons entrusting the construction activities to the said Committee of the resolution thereof earlier was on record, taking all these materials into consideration and observations of the learned Metropolitan Magistrate as contained in the impugned order, how he came to the conclusion that no prima facie case for the purposes of issuance of summons under Section 204 was made out by the petitioner.

7. However, there is yet another aspect of this controversy, the alleged offence took place from 1969 to 1973 i.e. to say almost 22 years have elapsed. The complaint was filed in the year 1979. Two of the persons accused of the offence namely Shri Daljit Singh and Shri Jaswant Singh are no more. The other two persons Shri G. S. Randhwa and Shri Gurbaksh Singh shown are aged about 70 years. Keeping in view these factors if I order for trial of this case to commence this, may be too harsh. I have observed earlier in this case that the learned Metropolitan Magistrate after coming to a prima facie finding that the irregularities

have taken place, ought to have summoned the accused persons under Section 204 of the Cr.P.C. But the case being very old, the alleged offence being committed in the year from 1969 to 1973, keeping in view the fact that two accused have died and the other two are in very advanced stage, I do not deem it a fit case to allow the Revision Petition.

8. Court puts on record the effort of the petitioner, who is pursuing this matter diligently for the last 22 years, who is also a Senior Lecturer in the said College. He has endeavored to see that public money be utilised for an accounted for in a manner which will inspire and instil confidence among all.

The petition is disposed of in terms of the above order.

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