

Anand Sharma Vs. State

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Court : Delhi

Decided On : Nov-11-2002

Reported in : 2003CriLJ1057; 101(2002)DLT297

Judge : J.D. Kapoor, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 173, 190 and 319

Appeal No. : CrLM(M) 1581/2001

Appellant : Anand Sharma

Respondent : State

Advocate for Def. : Sunil Kapoor, APP

Advocate for Pet/Ap. : Puneet Mittal, Adv

Disposition : Petition allowed

Judgement :

J.D. Kapoor, J.

1. This petition seeks setting aside of order dated 31.11.98 whereby the learned Magistrate took cognizance of the offence against the accused who was arrayed in column number 2 by presumably invoking the provisions of Section 139 Cr.PC.

2. Admittedly, the petitioners were arrayed in column No. 2 in the charge sheet submitted under Section 173 Cr PC. It means that the police did not find sufficient material emanating from the investigation for trial of the petitioner as accused. It appears that the learned Magistrate took the cognizance against the petitioner under the misconceived notion that he was taking the cognizance under Section 190 of the Cr PC.

3. Section 190 of the Cr PC empowers the Magistrate to take cognizance of any offence upon receiving the complaint of facts which constitute such offence or upon the police report on such facts or upon information received from any person or upon his knowledge that such offence has been committed.

4. In the instant case, the cognizance was initially taken by the Magistrate against the accused persons who are placed in column number 4 of the charge-sheet which was filed on 6.4.96 and issued the process. So far as the petitioner was concerned, highly (sic) order dated 30.11.98 was passed for serving the summons upon him through the Investigating Officer. The order is completely silent as to the material on record that prompted the Magistrate to exercise the jurisdiction Under Section 190 Cr PC. However, Section 319 of the Cr PC vests the Court with the power to proceed against any such other person including the person placed in column number 2 to be guilty of the offence if it appears from the evidence in the course of any inquiry or trial, that any such person not being the accused has committed an offence for which such person could be tried together with the accused.

5. The impugned order does not disclose whether the learned Magistrate issued the process against the petitioner on the basis of the material or evidence appearing either during the course of inquiry or trial or even otherwise i.e. on the basis of the allegations contained in the report Under Section 173 Cr PC. The impugned order is also silent whether the learned Magistrate has taken cognizance of the offence against the petitioner or not. He has only ordered that the petitioner in column number 2 be served through Investigating Officer. Though impliedly such an order may tantamount to taking cognizance but in that case the Magistrate is required to not only record the reasons but also to disclose the

material or the evidence appearing against such person who has not been sent as accused for being tried together with the accused persons. Thus, impugned order cannot be sustained in the eyes of law and is liable to be set aside as the learned Magistrate has not recorded the reasons or the material or the evidence warranting the summoning of the petitioner and issuing the process against him. For the aforesaid reasons, the petition is allowed and the impugned order is set aside.

6. However, this order will not debar the Magistrate from taking cognizance at subsequent stage or on the basis of the material or the evidence that may be found against the petitioner either during trial or otherwise and in that eventually the Magistrate is expected to record the reasons and disclose the material or the evidence upgrading him to take cognizance against those persons who have not been sent for trial.

The petition is disposed of.

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