

Darshan Kumar Vs State and anr.

Darshan Kumar Vs State and anr.

SooperKanoon Citation : sooperkanoon.com/904706

Court : Delhi

Decided On : Jul-30-2010

Judge : Mr. Shiv Narayan Dhingra, J.

Acts : Sections 420 of IPC.; Section 482 of Cr.P.C

Appeal No. : Criminal M.C. No.3375 of 2009 & C.M. Appl. No.11396 of 2009

Appellant : Darshan Kumar

Respondent : State and anr.

Advocate for Def. : Mr. O.P. Saxena, Mohinder Singh, Mr. Vijay Aggarwal, Advs.

Advocate for Pet/Ap. : Mr. Mohit Mathur, Mr. Shishir Mathur, Mr. Ritesh Thusu, Mr. N.K. Bhardwaj, Mr. Sanjay Chauhan, Advs.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether judgment should be reported in Digest?

1. This petition has been filed by the petitioner for setting aside order dated 16th January, 2009 passed by the court of learned Metropolitan Magistrate and to quash the proceedings initiated therein under F.I.R. No.290 of 2002 registered under Section 420 IPC at Police Station Okhla Industrial Area. The order dated

16th January, 2009 shows that after receiving charge sheet in case F.I.R. No.290 of 2002, the court took cognizance of the offence and directed for summoning the accused through Investigating Officer for 20th July, 2009. Quashing is sought on the ground that the F.I.R. and the proceedings initiated there under was a gross misuse of the criminal justice system and learned trial court committed an error in law in not summoning the offending company named in the F.I.R. and issuing process against the directors. It is submitted that there was no mensrea, that is, intention to deceive and the learned Metropolitan Magistrate by a non-speaking order summoned the petitioner.

2. I consider that the present petition is a gross misuse of Section 482 Cr.P.C. At the time of taking cognizance of the offence, the trial court is not supposed to give reasons for taking cognizance. The offences for which the cognizance was taken by the trial court in this case are warrant trial offences and soon after taking cognizance, the process of hearing accused on charge is to be adopted by the trial court. It is at that stage that the trial court has to consider whether a charge was made out against the accused and he is to be put to trial or not. At the stage of framing charge, the trial court is supposed to hear the accused and take into account the charge sheet and other evidence collected by prosecution and pass a speaking order as to why he considered that the accused was to be put to trial.

3. I, therefore, consider that the present petition was not maintainable and the accused should have argued on charge before the trial court.

4. The petition is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com