

Documents) Avdhesh Mittal & Anr vs State Of Nct Delhi & Anr on 18 January, 2023

Author: Amit Sharma

Bench: Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2808/2014 & CRL.M.A. 48784/201

documents)

AVDHESH MITTAL & ANR

Through: Mr. Pradeep Jain, Adv

versus

STATE OF NCT DELHI & ANR

Through: Mr. Aman Usman, APP fo

Insp. Dinesh Malik, EO

Mr. Vikas Sharma, Mr.

Tiwari & Mr. Surya Sin

for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% 18.01.2023 The present petition under Section 482 read with Section 397(1) Cr.P.C. filed on behalf of the petitioners, seeks following prayers:

"a. Call for the impugned order dated 23.05.2014 passed by the learned District and Sessions Judge and to quash the same; b. Consequently, quash the order dated 30.05.2014 passed by the learned Chief Metropolitan Magistrate directing the EOW to register an FIR against the petitioners;

c. Alternatively, in case, an FIR in compliance of the order dated 30.05.2014 is registered the same may be quashed; and d. to pass any other order as this Hon'ble Court may deem fit and proper in the interest of justice."

Learned counsel appearing on behalf of the petitioners submits that the impugned order dated 23.05.2014, passed by learned District and Sessions Judge, South-East, Saket Courts, New Delhi in Crl. Rev. No. 127/13, titled Sh. Honey Gupta v. State and Ors. had set aside an order dated 28.10.2013 passed by the learned Chief Metropolitan Magistrate whereby an application filed by the respondent no. 2 herein under Section 156(3) Cr.P.C. was dismissed and further directed the learned trial Court to direct the police to register and investigate the case. Consequently, in terms of present impugned order, learned Chief Metropolitan Magistrate vide order dated 30.05.2014, directed

Economic Offence Wing (herein after referred as „EOW) to register FIR against the petitioner. It is further submitted that the impugned order passed by learned District and Sessions Judge, South-East, Saket Courts, Delhi ignored the provisions of Section 401(2) Cr.P.C. which provides as follows:

"(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence. "

Learned counsel appearing on behalf of the petitioners relies upon following judgements;

1. Raghu Raj Singh Rousha v. Shivam Sundaram Promoter Pvt. Ltd. and Anr. (2009) 2 SCC 363.
2. Manaharibhai Muljibha Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel & Ors. 2012 (9) SCALE.
3. Shri Shyamsunder Radheshyam Agarwal v. State of Maharashtra and Anr., 2013 SCC OnLine Bom 248 : (2013) 2 AIR Bom R 997 : 2013 Cri LJ (NOC 371) 140.

Learned counsel appearing on behalf of respondent no. 2 fairly submits that no notice of the revision petition was issued to the petitioners before passing of the impugned order dated 23.05.2014.

With the consent of the parties and without prejudice to their rights and contentions, the impugned order dated 23.05.2014, passed by Ms. Ina Malhotra, learned District and Sessions Judge, South-East, Saket Courts, Delhi is set aside and the parties are remanded back to the Court of learned District and Sessions Judge, South-East, Saket Courts, Delhi for fresh consideration of Revision Petition No. 127/2013. Learned District and Sessions Judge, South-East, Saket Courts, Delhi shall, after giving opportunity to both the sides, pass appropriate orders, in accordance with law.

In view thereof, order dated 30.05.2014 passed by learned Chief Metropolitan Magistrate, South-East, Saket Courts Delhi and the consequent FIR bearing no. 0056/2014, under Sections 420/406/467/468/471/474/201/ 120B/506/34 IPC registered at PS EOW, which were in nature of consequent proceeding arising from the aforesaid impugned order dated 23.05.2014, are also quashed.

The petition is allowed and disposed of accordingly. Needless to state, this Court has not expressed any opinion on the merits of the case.

Let the parties appear before the learned District and Sessions Judge, South-East, Saket Court, Delhi on 14.02.2023, for further proceedings.

Pending applications(s), if any, also stand disposed of.

AMIT SHARMA, J JANUARY 18, 2023/bsr