

Vipul Gupta vs State & Anr on 12 April, 2021

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1163/2021
VIPUL GUPTA

Through : Mr.Sandeep Sethi, Sr Ad
Mr.Vijay Aggarwal, an
Sharma, Advocates.

versus

STATE & ANR.

Through : Mr.M.S.Oberoi, APP for
Ahlawat, APP for the
Mr.Mohit Mahtur, and
Aggarwal, Sr Advocate
for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 12.04.2021

1. The hearing has been conducted through Video Conferencing.
2. Exemption allowed, subject to all just exceptions.
3. The application stands disposed of.

CRL.M.C. 1163/2021 & CRL.M.A. 5948/2021

4. This petition is filed with following prayer :

a) Pass necessary orders and directions thereby setting aside order dated 05.04.2021 passed by the court of Sh. Girish Kathpalia, Principal District & Sessions Judge (HQs), Delhi in Criminal Revision No. 77 of 2021 titled as "Vipul Gupta vs State" arising out of impugned order dated 01.02.2020, 22.02.2021 and 06.03.2021 passed by Ld. ACMM, Central District Court, Tis Hazari .District Courts, New Delhi in the.

criminal case titled as "State v/s S.P. Gupta & Ors. Bearing FIR No. 09 of 2000;

5. The issue placed before this court in this petition as to if the victim has a right to be heard in revision petition pending before the learned Session's Court filed against an order passed by the

learned magistrate. It is the submission of the learned senior counsel for the petitioner per judgments Kerala Transport Co. vs. D.S.Soma Shekar and Ors.MANU/KA/0027/1981; Indu Bala & Ors. vs. Delhi Administration and Ors. 1991 CRL.J.1774; L.K.Jain and another vs. State 2001 CRL.J. 259; Shiv Kumar vs. Hukam Chand & Anr. 1999 (2) JCC (SC)466; Mahabunnisa Begum vs. State of Telangana and Ors.; High Court of Judicature of Hyderabad for the State of Telangana and the State of Andhra Pradesh vs. Mahabunnisa Begum and Ors. Special Leave to Appeal (Crl.) 2240/2018 and Dhariwal Industries Ltd. vs. Kishore Wadhwani & Ors. 2016(8) SCALE 735, though the victim can participate in the trial before the learned Magistrate but he has no such right to appear and participate in the proceedings before the learned Session's Court. He refers to Section 401 Cr.P.C in this regard.

6. Further he submits a perusal of the impugned order would show that no opportunity was given to the accused to address his arguments if the presence of the victim was required in hearing of the revision petition and such an opportunity ought to have been given since impugned order had caused prejudice to the accused and further, the impugned order was passed without forming an opinion by the Court as to if the presence of the victim was essential before it.

7. On the other hand, the learned senior counsel appearing on behalf of the complainant/respondent no.2 says the judgments cited by the learned senior counsel for the petitioner has no relevance in respect of an order passed by the learned Magistrate, taken to the learned Sessions Court in revision proceeding; such revisional proceedings being in continuation of the proceeding of the learned Magistrate. It is submitted the law propounded is only qua the participation of the victim in Session's trial and what the law bars is the participation of the victim during Session's and not in revision, per Section 403 Cr.P.C.

8. Furthermore, the submissions of the learned senior counsel for the complainant are thrice orders were passed in the proceedings before the learned Magistrate i.e. on 26.03.2009, 07.01.2012 and 17.04.2012 wherein the right to participate in the proceedings was afforded to the victim, which orders were challenged before the learned Session's Court but were upheld.

9. In the circumstances, it is argued by the learned senior counsel for the complainant the impugned order suffers from no infirmity since such order only allows the respondent to participate in the revision proceedings in respect of an order passed by the learned Magistrate.

10. The learned senior counsel for the respondents intend to file reply as also various orders passed at different intervals by the courts below and would also like to file the case law in this regard. Let it be filed and placed on record on or before the next date of hearing. A copy thereof be shared with learned counsel for petitioners through email for further hearing.

11. List on 15.04.2021.

YOGESH KHANNA, J.

APRIL 12, 2021 ab/M