

## V P Singh & Anr vs State & Anr on 6 February, 2019

**Author: R.K.Gauba**

**Bench: R.K.Gauba**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 684/2019

V P SINGH & ANR

..... Petitioners

Through:

Mr. K.T.S. Tulsi, Sr. Adv. with Mr.  
A. Faraz Khan, Adv.

versus

STATE & ANR

..... Respondents

Through:

Mr. Sanjeev Sabharwal, APP for the  
State with Sub Insp. Rajnish, PS S.J.  
Enclave.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA  
ORDER

% 06.02.2019 Allowed, subject to all just exceptions.

CRL.M.C. 684/2019 & Crl.M.A.2781/2019 On the criminal complaint case (no. 462746/2016) of the second respondent (the complainant), the petitioners were summoned as accused by the Metropolitan Magistrate, by order dated 12.02.2015, on the accusations for offences under Sections 379/451(2)/506/34 of Indian Penal Code, 1860 (IPC). The complainant led pre-charge evidence, upon consideration of which the Metropolitan, by order dated 02.08.2018 has found no case made out for the petitioners to be put on trial except on the charge under Section 453 read with Section 34 IPC. By the said order dated 02.08.2018, which is impugned by the petition at hand, the Magistrate proceeded to take the case for "formal notice" to be framed. The direction in the impugned order dated CRL.M.C. 684/2019 page 1 of 3 02.08.2018 for the case to be put up for framing of a formal "notice" gives the impression that some confusion has prevailed on the mind of the Metropolitan Magistrate inasmuch pre-charge evidence having been led prior to the said order, the case could not have been treated as one for notice (presumably under Section 251 Cr.P.C.) to be framed since warrant trial procedure cannot be changed suddenly to the summons trial procedure. The counsel for the petitioners has shown a formal notice having been framed in the wake of the said order dated 06.10.2018. This prima facie, shows that procedure adopted to be incorrect and improper.

Be that as it may, the question essentially raised by the petitioners is on the issue of limitation. It is their submission that, in the earlier complaint dated 18.04.2013 to the executive magistracy, the date of illegal trespass was referred to 18.02.2010. While pointing out that different dates of such offence (assuming there was an offence committed) have been mentioned in the earlier complaints to the police authorities, and to the Metropolitan Magistrate, it is assured that initiation of action for offence under Sections 453/34 IPC for which prosecution continues is beyond the period of limitation and, thus, impermissible.

Issue notice.

The first respondent/State accepts notice through Mr. Sanjeev Sabharwal, Additional Public Prosecutor. Response may be filed well in time before the next date of hearing.

Steps will be taken for service of notice on the second respondent, returnable for 10th July, 2019. Meanwhile, the proceedings before the trial court shall remain stayed.

CRL.M.C. 684/2019 page 2 of 3 The petitioners have not filed copies of original documents and orders. Some of the true copies are full of errors which is not acceptable. Though photocopies of originals were shown at the hearing, it will be appropriate that the petitioners file photocopies of originals on record as well. Needful shall be done within a week before notice is issued to the second respondent.

Dasti under the signatures of Court Master.

R.K.GAUBA, J.

FEBRUARY 06, 2019  
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CRL.M.C. 684/2019

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