

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 6th November ,2009*
Judgment Delivered on: 11th November, 2009

+ **CRL.REV.P. 563/2009 & CrI.M.A.12341/2009**

SUNIL MANCHANDA & ANR. Petitioner
Through: Mr.Rajat Wadhwa, Adv.

versus

STATE Respondent
Through: Ms.Fizani Husain, APP.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. By way of this revision petition the petitioner has impugned the order dated 10.9.2009 whereby the Trial Court had framed notice under Section 251 of the Cr. P.C. against the petitioners Sunil Manchanda, Kapil Mahajan for an offence punishable under Section 285/337/338 of the IPC.

2. Briefly stated the facts of the case are as follows :-

On 15.2.2002 vide DD No.45 received at police station Sultan Puri, information was given that a blast had taken place near Adarsh Nursery in the scrap lying therein; some persons had received injuries. The investigative team reached the spot. Four persons were found to be injured namely Raj Kumar, Subhagman, Ram Murat and Ram Bachan; they had been removed to S.G.M. Hospital. Their MLCs had depicted the injuries to be dangerous and grievous.

Statement of all the injured were recorded on 16.2.2002. They were all working as labourers in the godown No.7 of Anand Nursery, Yadav Farms, Kirari Road, Delhi for the last three months. On the fateful day i.e. 15.2.2002 while they were dealing with scrap in the godown between 2.30-2.45 PM there was a blast pursuant to which the aforestated persons received injuries; they were removed to the hospital by the owner of the farm house in the PCR van. Supplementary statements of the injured were recorded on 6.3.2002. In these statements all the aforestated persons had spelt out the role of the present petitioners namely Sunil Manchanda and Kapil Mahjan. It had been stated that they were working in godown No.7 which belonged to the present petitioners; from the scrap chemical gas

and pollution used to be emitted; this had been informed to the petitioners as also to the contractor Amrit Lal Shukla. They, however, did not bother and kept the matter pending saying that nothing untoward will happen and if they i.e. injured are aggrieved by the working conditions they may leave; due to financial compulsions the injured had continued working; on the fateful day injured Ram Bachan's foot came under a hammer pursuant to which a gas and chemical gas got emitted resulting in the blast. Aforestated persons were injured. In this version, it has been averred that the accident had occurred because of the negligence of the factory owners namely the petitioners Sunil Manchanda and Kapil Mahajan.

3. The scrap including pieces of the metal which has been lifted from the spot had been sent to CFSL for examination. The CFSL vide its report dated 24.8.2003 had opined that no explosive substance could be detected in the said exhibit.

4. Charge sheet in this case had accordingly been filed under Sections 337/338 of the IPC on 4.2.2004; cognizance was taken on i.e. 20.2.2004. Notice in this case had been framed been on 10.9.2009 under Section 285/337/338 of the IPC.

5. On behalf of the petitioner, it has been submitted that notice had been framed under Section 285 of the IPC on 10.9.2009; the cognizance of the offence under Section 285 of the IPC was taken for the first time on 10.9.2009 which is beyond the period of limitation as offence in this case is dated 15.2.2002 and cognizance under Section 285 of the IPC having been taken seven years later is clearly barred by Section 468 of the Cr.P.C. Cognizance under Section 285 of the IPC is bad and liable to be set aside.

6. Second argument propounded is that the averments made in the charge sheet do not attract the provisions of Sections 337/338 of the IPC. The petitioners cannot be held guilty for a vicarious liability. Negligence under criminal law cannot be equated with negligence under civil law; parameters and the essential ingredients to a judge 'negligence' in order to fasten a criminal liability are distinct. Reliance has been placed upon AIR 2005 SC 3180 Jacob Mathew Vs. State of Punjab to support this submission. Ingredients of the offences under Sections 337/388 of the IPC which necessarily postulate a negligent act are not made out qua the petitioners; they are entitled to a discharge.

7. Learned prosecutor has rebutted these arguments.

8. The offence is dated 15.2.2002. The charge sheet had been filed under Section 337/338 of the IPC on 4.2.2004; on 20.2.2004 the cognizance of the offences had been taken. Notice was framed on 10.9.2009.

9. The stage of the framing of a notice is different and distinct from the stage of taking cognizance. Cognizance has not been defined in the statute; either in the IPC or in the Cr. P.C. but it necessarily means taking of judicial notice which is a stage when the accused is not to be heard; it is a matter between the Court and the complainant/State; at the stage of notice accused has a right to be heard. Cognizance is taken of the offence and not of the offender. Admittedly as on 20.2.2004 cognizance of the offence under Section 285 of the IPC was within limitation.

10. The bar of Section 468 of the Cr. P.C. operates on the taking of the cognizance of an offence. In this case cognizance of the offence had been taken on 20.2.2004 when the accused were summoned; on which date admittedly there was no bar of limitation for taking cognizance of the offence under Section 285 of the IPC. On 10.9.2009 the stage of cognizance was already over; it was the stage when the notice was framed against the accused persons which is a subsequent stage i.e. after the stage

of taking cognizance. Bar of Section 468 of the Cr.P.C. is inapplicable.

11. On merits, the statements of the injured persons namely Raj Kumar, Subhagman, Ram Murat and Ram Bachan have been perused. Their first statements were recorded by the Investigating Officer on 16.2.2002 and their supplementary statements were recorded on 6.3.2002; they had suffered grievous and dangerous injuries. The averments contained in their second statements dated 6.3.2002 evidently and prima facie detail the role of the present petitioners and which have been discussed supra. Section 285 speaks of negligent conduct with respect to fire or combustible matter. Sections 337/338 of the IPC encompass endangering of life and personal safety of others by causing hurt or grievous hurt respectively.

12. At the stage of framing of notice under Section 251 of the Cr. P.C. it is the substance of the accusation which has to be stated to the accused in order that the accused knows that he has to meet this charge. This accusation has been so stated clearly in the notice framed against the petitioners. The particulars of the offence had been explained to them.

13. There is no merit in this revision petition. Dismissed

(INDERMEET KAUR)
JUDGE

11, November, 2009
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