

**IN THE COURT OF SHRI ANUJ AGRAWAL
ADDITIONAL SESSIONS JUDGE-05, SOUTH EAST DISTRICT,
SAKET COURTS, NEW DELHI**

REVISION PETITION NO. 317 of 2018

CNR No.DLSE01-003718-2018

IN THE MATTER OF:

Abdul Rehman

S/o late Abdul Majeed,
R/o 1/1, Kirti Apartments,
Mayur Vihar, Phase-I,
New Delhi-110091

..... Revisionist

Versus

1. State

2. Spearhead Digital Studio (P) Ltd.

Through Sh. Rajesh Duggal (M.D.)
C-161, Okhla Phase-I, New Delhi-20.

..... Respondents

Instituted on : 03.05.2018

Reserved on : 23.08.2022

Pronounced on : 01.09.2022

JUDGMENT

1. By way of the instant petition, revisionist takes exception to the order dated 27.02.2018, passed by Ld. Metropolitan Magistrate-02, South East District, New Delhi in case bearing FIR No.520/2004, under section 420/468/471/34 IPC, Police Station Okhla Industrial Area, whereby Ld. Magistrate while rejecting the cancellation report (filed by Investigating Agency), took cognizance of the offences punishable under section 406/471 IPC and summoned the revisionist/accused.

2. Brief facts, as noted by Ld. Magistrate in the impugned order are being reproduced for the sake of convenience :-

“ In brief facts of the case are that an application/complaint was lodged by the complainant through its Managing Director namely Rajesh Duggal stating herein that accused No.1 was engaged as a counsel by the complainant firm as two FIR No. 527 dated 16.12.2001 and FIR No. 29/02 dated 16.01.2002. It is further stated that accused No.1 extracted Rs. 2 lakh in December 2001, Rs. 5 lakh in February 2002, Rs. 2 lakh and Rs. 5 lakh in April 2002, Rs. 3,50,000/- in April 2002 from the complainant on one pretext or another. It is further stated by the complainant that accused No.1 asked for the car from the complainant stating that his car is out of order and took complainant's Ford Icon bearing No. DL-3C-S-4120 from premises of the company, for few days.

It is further stated that when complainant Sh. Rajesh Duggal was at his office premises, he tore two pre signed letter heads and throw the same in dustbin, in presence of accused No.1 and accused No.1 stole those two letter heads and subsequently used them in forging a receipt of the said vehicle. It is further stated that when complainant ask back for the car, accused no.1 lodged a false complaint using those forged document against Rajesh Duggal. It is further stated that when complainant was granted Anticipatory bail, he came to know about the forged documents executed by accused no.1.”

3. Record reveals that Ld Trial Court vide its order dated

05.06.2004 directed for registration of FIR against the revisionist and other co-accused (not party herein) while disposing application of complainant moved under section 156 (3) Cr.PC. Record further reveals that thereafter, FIR No.520/2004 was registered at PS Okhla Industrial Area and matter was investigated and after investigation, a cancellation report dated 10.05.2007 was filed by Investigating Agency stating therein that no incriminating evidence was found against the revisionist/accused. Record further transpires that thereafter, protest petition came to be filed by complainant against the said cancellation report.

4. Record reveals that Ld Trial Court vide its order dated 18.04.2012 directed for further investigation in the matter. After conclusion of further investigation, cancellation report came to be filed again by Investigating Agency to which, complainant preferred another protest petition.

5. Record also reveals that an FIR No.345/2003, PS Mayur Vihar was lodged by revisionist/accused against the complainant for offence under section 379 IPC i.e. with the allegations of theft of car bearing No.DL3CS 4120 wherein respondent/complainant Rajesh Duggal was discharged by Ld MM vide order dated 19.05.2017.

6. Record reveals that a civil suit for permanent injunction, declaration and damages also came to be filed by respondent/complainant against revisionist/accused seeking declaration that former is the owner of the car bearing No.DL3CS 4120 which was decreed by Ld Addional District Judge vide judgment dated 24.12.2016. Said judgment was upheld

by Hon'ble Apex Court.

7. Record reveals that Ld Trial Court after considering the facts and circumstances of the case as well as material available on record vide impugned order took cognizance and opted to summon the revisionist/accused for offences under section 406/471 IPC with following relevant observations :-

“In the present case in hand although no document or incriminating evidence has been brought forth by the investigating agencies or complainant on record with regard to the fact that accused persons have extracted money from the complainant herein. However with regard to the allegation that accused no.1 has been entrusted with the possession of Ford Icon bearing no. DL3CS4120 by the complainant and same has been misused by the accused, there has been substantive material placed on record by the complainant herein against the accused person. In the FIR bearing no. 345/03 lodged by accused no.1 against Rajesh Duggal u/s 379 IPC for theft of abovesaid car i.e. Ford Icon bearing No. DL-3C-S-4120, complainant Rajesh Duggal was discharged by Ld. MM vide order dated 19.05.2017. Further suit for permanent injunction, declaration and damages was filed by the complainant herein against the accused seeking declaration that complainant was owner of the said car bearing No. DL3CS4120 was decreed by the court of Ld. ADJ and said judgment was upheld by Hon'ble Apex Court of India.

Considering the fact that prima facie there is evidence on record to show that the accused no.1 had misappropriated the car bearing no. DL3CS4120 entrusted upon him by the complainant by using the forged documents, the findings in the closure report so filed in the present matter is not relied upon and cognizance for offence punishable u/s 406/471 IPC is taken against the accused no.1. It is further hereby made clear that as no incriminating evidence has been brought forth against accused no.2 and 3, no cognizance has been taken of any offence against the said accused persons.”

8. The revisionist is aggrieved with the said order of the Ld. Trial Court and has assailed the impugned order on the various grounds

which can be summarized as under:-

- (i) That the impugned order is bad in law, resulting in grave miscarriage of justice;*
- (ii) That the impugned order is against the settled principles of law;*
- (iii) That Ld Trial Court erred in relying upon the observations made in exparte judgment passed in a civil suit;*
- (iv) That Ld Trial Court failed to appreciate the contents of cancellation report wherein Investigating Agency found no evidence against the revisionist;*
- (v) That all the alleged allegations have been totally disproved in view of filing of cancellation report and that no chargesheet has been filed by the Investigating Agency;*
- (vi) That no person can be called to be tried for a criminal offence without a chargesheet or notice and details of evidence including list of witnesses;*

9. Ld. Counsel for revisionist argued on the line of grounds as mentioned in the instant revision petition. He vehemently argued that Ld. Magistrate committed grave error in passing the impugned order as the same was passed hastily ignoring the factual matrix and materials available on record. He further argued that Ld Magistrate erred in law by not relying upon the cancellation report. On the strength of these arguments, revisionist seeks setting aside of the impugned order.

10. Per contra, Ld Sub. Addl PP for the State/respondent no.1 vehemently argued that there is no infirmity in the impugned order and Ld.

Magistrate for the right reasons had summoned the revisionist while taking cognizance on the basis of cancellation report. She further argued that the impugned order was passed after considering all the facts and circumstances of the present case. It was submitted that the present revision petition is misconceived and therefore, same is liable to be dismissed.

10A. None appeared on behalf of respondent no.2 to address arguments.

11. I have heard rival contentions and perused the record.

12. In the matter of **Taron Mohan v. State & Anr 2021 SCC OnLine Del 312** Hon'ble Delhi High Court has observed as under:-

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.”

13. Further, Hon'ble Apex Court in **Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and others, 2015 (3) SCC 123** observed as under :

“14.....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is

not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."

14. In the above case also conviction of the accused was recorded, the High Court set aside the order of conviction by substituting its own view. This Court set aside the High Court's order holding that the High Court exceeded its jurisdiction in substituting its views and that too without any legal basis."

14. This view has been reiterated by Hon'ble Apex Court in ***New India Assurance Co. Ltd. Vs. Krishna Kumar Pandey***, 2019 SCC OnLine SC 1786, in the following words :

"8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C, is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisional power is to set right a patent defect or an error of jurisdiction or law. "

15. Similar are the observations of Hon'ble High Court in ***Rajender Singh Thakur Vs State & Anr***, CrI Rev. P. No. 155/2022, decided on 22.03.2022 and in cross case ***Jaspreet Singh Vs Swaneet Kukreja*** and ***Swaneet Kukreja Vs Jasmeet Singh***, CrI Rev. P No.

162/2021 and Crl Rev. P No. 194/2021, both decided on 28.02.2022.

16. Therefore, in view of the settled position of law, this court in its revisional jurisdiction, is not expected to substitute its own view with that of Ld. Trial Court until and unless the order passed by Ld. Trial Court suffers from jurisdictional error or patent infirmity/illegality. In the instant case, as evident from record, Ld. Magistrate while narrating (in detail) the facts, passed a well reasoned detailed order, thereby taking cognizance and summoning the revisionist for offences under section 406/471 IPC while brushing aside the cancellation report. Therefore, this court cannot and rather ought not substitute its own view with that of Ld. Magistrate (while exercising its revisional jurisdiction) and thereby arriving at a different conclusion. In my view, Ld. Magistrate has provided clear and cogent reasons for summoning the revisionist and it is clearly not for this Court to second guess the decision.

17. Suffice it would be to say that as rightly observed by Ld Magistrate in view of the statement of complainant and other material available on record including the decree of Ld ADJ (upheld by Hon'ble Apex Court) wherein complainant/respondent no.2 was declared as rightful owner of the vehicle in question, there was sufficient ground to take cognizance and summon the revisionist. Therefore, the view taken by Ld Magistrate on this count cannot be faulted with. Ld. Counsel for revisionist failed to point out any patent illegality/ infirmity or jurisdictional error in the impugned order and therefore, present petition is liable to be dismissed.

18. **With these observations, it is held that there is no patent illegality, impropriety or jurisdictional error in the impugned order. Accordingly, the revision petition stands dismissed.** The interim order stands vacated in view of the dismissal of instant petition.

19. TCR be sent back to the Ld. Trial court along with copy of this judgment. Revision file be consigned to Record Room after due compliance.

**Announced in the open
Court on 01st September, 2022**

**(ANUJ AGRAWAL)
Additional Sessions Judge-05,
South East, Saket Courts, New Delhi**