

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CRIMINAL APPEAL NO(s). 245 OF 2007

STATE OF DELHI

Appellant (s)

VERSUS

RAJINDER SAINI AND ANR.

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report ))

Date: 30/03/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI  
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s) Mr.H.P.Raval,ASG,  
Mr.Anjani Aiyagam,Adv.  
Mr.Wasim Quadri,Adv.  
Mrs Anil Katiyar,Adv.

For Respondent(s) Mr. Rajesh Srivastava,Adv.  
Mr.Ananjita Gupta,Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

(KUSUM SYAL)  
SR. P.A.

(VINOD KULVI)  
COURT MASTER

(Signed Order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

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O R D E R

We have heard learned counsel for the parties.

It is clear from the record that the action taken by the

respondents was in the nature of colour of duty as visualised in Section 140 of the Delhi Police Act. The allegations are that while investigating a criminal matter they had not taken into consideration the instructions contained in Chapter 25 of the Punjab Police Rules, 1934 and Standing Order No. 77.

Mr. Qadri, the learned counsel for the appellant has argued that the Magistrate should have been allowed to issue summons at the initial stage and to examine as to whether the matter would fall under Section 140 or under Section 197 of the Code of Criminal Procedure so that the respondents would have the protection of these two provisions. The learned counsel has relied on the judgment of this Court in Raj Kishore Roy vs. Kamleshwar Pandey & Anr. (2002) 6 SCC 543. This very fact has been dealt with in the impugned order which reads as follows:

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" In view of above discussion, I am of the considered opinion that the Magistrate had the power to summon the petitioner for the offence under Section 201 of the Indian Penal Code, although in view of the bar of Section 197 of the Code and Section 140 of all Delhi Police Act, the petitioners enjoyed a protection and therefore, could not have been summoned. The revision petition is allowed and the impugned order is set aside".

We, therefore, do not find any force in the arguments addressed by the counsel for the appellant. The High Court has observed that the Magistrate had the power to summon the respondents herein for the offence under Section 201 of the Indian Penal Code but in view of the bar of Section 140 of the Delhi Police Act and Section 197 of the Code of Criminal Procedure, the respondents enjoyed protection and, therefore, should not have been summoned. We, therefore, find no merit in this appeal, which is accordingly dismissed.

.....J  
(HARJIT SINGH BEDI)

.....J  
(CHANDRAMAULI KR. PRASAD)

NEW DELHI  
MARCH 30, 2011