

19,20,23

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.A. 491/2012

MINTU SINGH

..... Appellant

Through: Mr. S.C. Sagar with Mr. Bhisham Singh,
Advocates

versus

STATE

..... Respondent

Through: Mr. Pawan Sharma, Standing Counsel
(Criminal) with Mr. Sahil Mongia and Ms.
Priyanka Kapoor and Ms. Richa Sharma,
Advocates with Mr. M.L. Sharma, ACP/DIU,
North East

AND

+ CRL.A. 591/2012 & Crl.M.A. 6204/2012

PURAN SINGH & ORS

..... Appellant

Through: Mr. S.C. Sagar with Mr. Bhisham Singh,
Advocates

versus

STATE

..... Respondent

Through: Mr. Pawan Sharma, Standing Counsel
(Criminal) with Mr. Sahil Mongia and Ms.
Priyanka Kapoor and Ms. Richa Sharma,
Advocates with Mr. M.L. Sharma, ACP/DIU,
North East

AND

+ CRL.M.C. 2944/2012 & CrI.M.A. 15596/2012

VIJAY BHUSHAN

..... Petitioner

Through: Ms. Rebecca M. John with Mr.
Kushdeep Gaur, Advocates

versus

STATE

..... Respondent

Through: Mr. Pawan Sharma, Standing Counsel
(Criminal) with Mr. Sahil Mongia and Ms.
Priyanka Kapoor and Ms. Richa Sharma,
Advocates with Mr. M.L. Sharma, ACP/DIU,
North East

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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28.09.2012

Present appeals and petition have been filed seeking setting aside of para 17 of the impugned judgment dated 29th February, 2012 passed by learned Special Judge, NDPS (North-East), Karkardooma Courts, Delhi in FIR No. 106/10 registered with Police Station Sonia Vihar, Delhi under Section 20 NDPS Act in case titled '*State v. Kishan Kumar @ Kishan Singh*'.

The appellants/petitioner in the present cases are police officials against whom the trial court has directed lodging of an FIR as well as initiation of a departmental inquiry.

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The trial court in the impugned judgment has given a finding that the appellants/petitioner had connived together to fabricate a false case against the accused.

Learned counsel for the appellants/petitioner submit that in the present cases, the procedure under Section 195 and Section 340 Cr.P.C. had not been followed and no preliminary inquiry had been conducted.

Mr. Pawan Sharma, learned Standing Counsel (Criminal) for the State has drawn this Court's attention to a recent Division Bench judgment of this Court on similar facts in *Ravinder Kumar Tyagi v. State, WP(Crl.) 264/2011, decided on 1st August, 2012* wherein the Division Bench not only set aside the observations and directions contained in the impugned judgment but also directed the Police Commissioner to conduct an inquiry after affording the delinquent police officials a reasonable opportunity of hearing.

Since in the present cases, no show cause notice had been issued to the delinquent police officials and they did not have an opportunity of hearing, this Court is of the opinion that the observations and directions contained in the impugned judgment are not warranted. The appellants/petitioner cannot be punished before they are found guilty. Their

individual role in the investigation requires to be inquired into by affording them reasonable opportunity of being heard. Prosecution should not be ordered because there is some inaccuracy in the statements which may be innocent or immaterial. There must be a *prima facie* case of deliberate falsehood on a matter of substance or resort to fabricating false evidence or creation of false clues with a view to secure conviction.

In view of the aforesaid, the directions contained in the impugned judgment require modification. The Commissioner of Police is directed to inquire into the role and conduct of the appellants/petitioner in the investigation of the case and take appropriate action in accordance with the Statute/Rules applicable to the appellants/petitioner, after affording them a reasonable opportunity of hearing.

The appeals and petition and all pending applications stand disposed of in the above terms.


MANMOHAN, J

SEPTEMBER 28, 2012
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3 fresh C/MAs

C/M A 5896/13 — for directions
C/M A 5897/13 — stay
C/M A 5898/13 — exemption

Disposed of matter