

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 1912/2006

Date of decision: February 27, 2008

NASEEM KHAN Petitioner

Through Mr. Kirti Uppal, Advocate

versus

STATE Respondent

Through Mr. Navin Sharma, APP

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

Dr. S. Muralidhar, J (open court)

CrI M A 3066/2006

Exemption allowed subject to all just exceptions.

The application is disposed of.

CrI M C 1912/2006 & CrI M A 3067/2006 (stay)

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') filed by the Petitioner challenging an order dated 18th January, 2006 passed by the learned Metropolitan Magistrate ('MM'), Delhi holding that a prima facie offence is made out in FIR No. 393/99 under Sections 354/341/323/506 IPC against the Petitioner and an order dated 16th March, 2006 passed by the learned Additional Sessions Judge ('ASJ'), Delhi dismissing the Petitioner's Criminal

Revision Petition No. 2/2006 upholding the aforementioned order dated 18th January, 2006 passed by the learned MM.

2. The FIR was registered on the complaint received from one Ms. Seema, a resident of 521, G.B. Road, alleging that the Petitioner on 4th November, 1999 at about 6.00 pm came in a car and snatched a chain that she was wearing. The inquiry conducted by the police on the said complaint as recorded in the case diary, concluded that no such incident had taken place. It was found that the complainant and the Petitioner had relations with each other. No witness was available on the spot and no offence was held to have been made out.

3. It appears that despite the aforementioned report, the learned MM on 4th May, 2002 took cognizance of the offence.

4. On 18th January, 2006 the learned MM passed the following order:

“18.1.2006

Present: Ld APP for the State.

Accused on bail.

Heard. Perused. Prima facie offence u/s 354/341/323/506 IPC is made out against the accused. Accordingly notice framed to which accused pleaded not guilty and claim trial. Case to come up for PE on 07.04.06.”

5. While dismissing Criminal Revision No. 2 of 2006 by the order dated 16th March 2006 the learned ASJ observed that the order dated 4th May, 2002 passed by the learned MM taking cognizance had not been challenged and could in any not be recalled in view of the judgment of the Supreme Court in *Adalat Prasad v. Roop Lal Jindal & Ors. AIR 2004 SC 4074*. It was accordingly held that the

issue raised by the petitioner was a matter of evidence and therefore, the case had to go to trial.

6. Mr. Uppal, learned counsel appearing for the Petitioner points out that no reasons have been given by the learned MM for differing from the closure report of the police. The order dated 18th January, 2006 is a non speaking order. He urges that this matter may be remanded to the learned MM for a fresh opinion on whether any offence is made out against the Petitioner warranting the framing of notice. He relies upon the judgment of the Supreme Court in ***Rupan Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill (1995) 6 SCC 194.***

7. Mr. Sharma, learned APP points out that the order dated 4th May, 2002 passed by the learned MM had not been challenged by the Petitioner. The case should now go to trial.

8. The undisputed position is that the police has filed a closure report on the FIR in question and the learned MM obviously differed from the said report in passing the order dated 18th January 2006. There is nothing on record to show on the basis on which the learned MM formed such opinion. The order dated 18th January, 2006 is indeed a non-speaking one. The Supreme Court in ***Rupan Deol Bajaj*** observed that the Court taking cognizance of an offence, in case where the police had filed a closure report, should give reasons since “reasons introduce clarity and minimize chances of arbitrariness.” The Supreme Court has explained in para 28 of the judgment the options available with the Court in the following words:

“28. Since at the time of taking cognizance the Court has to exercise its judicial discretion it necessarily follows

that if in a given case – as the present one - the complainant, as the person aggrieved raises objections to the acceptance of a police report which recommends discharge of the accused and seeks to satisfy the Court that a case for taking cognizance was made out, but the Court overrules such objections, it is just and desirable that the reasons therefore be recorded. Necessity to give reasons which disclose proper appreciation of the issues before the Court needs no emphasis. Reasons introduce clarity and minimise chances of arbitrariness. That necessarily means that recording of reasons will not be necessary when the Court accepts such police report without any demur from the complainant. As the order of the learned Magistrate in the instant case does not contain any reason whatsoever, even though it was passed after hearing the objections of the complainant it has got to be set aside and we do hereby set it aside. Consequent thereupon, two courses are left open to us; to direct the learned Magistrate to hear the parties afresh on the question of acceptance of the police report and pass a reasoned order or to decide for ourselves whether it is a fit case for taking cognizance under Section 190(1)(b) Cr.P.C. Keeping in view the fact that the case is pending for the last seven years only on the threshold question we do not wish to lake the former course as that would only delay the matter further. Instead thereof we have carefully looked into the police report and its accompaniments keeping in view the following observations of this Court in ***H.S. Bains. v. State***, with which we respectfully agree: (SCC pp. 635-36, para 7)

“The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence under Section 307 Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclosed an offence under Section 324, I.P.C. only and he may take cognizance of an offence under Section 324 instead of Section 307. Similarly if a police report mentions that half a dozen persons examined by them claim to be eye witnesses to a murder but that for various reasons the witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses

as revealed by the police report.”
(emphasis supplied)

9. Keeping in view the facts and circumstances of the case and the law as explained in the judgment of the Supreme Court in *Rupan Deol Bajaj*, the orders 4th May 2002 and 18th January, 2006 passed by the learned MM and the order dated 16th March, 2006 passed by the learned ASJ dismissing the Petitioner’s Criminal Revision Petition No. 2 of 2006 are hereby set aside. It is directed that the learned MM will once again form an opinion, notwithstanding the order dated 4th May 2002, whether cognizance should be taken of the offence and notice should be framed, keeping in view the law explained by the Supreme Court in *Rupan Deol Bajaj*.

10. The petition and the pending application are disposed of.

11. The parties are directed to appear before the concerned MM on 24th March, 2008 at 10.30 am for directions.

12. A copy of order be given dasti to learned counsel for the parties.

13. A certified copy of order be sent, within a period of five days from today, to the learned ACMM for being placed before the appropriate court of the learned MM before whom the case is to be listed.

S.MURALIDHAR, J

FEBRUARY 27, 2008
rk