

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. W. No. 86/2008**

% Judgment reserved on: 21.07.2009
Judgment delivered on: 17.08.2009

R.K. Mishra & Ors.

..... Petitioner

Through: Mr. Ramesh Gupta,
Senior Advocate with Mr. Rakesh
Tiku, Advocate & Manish Tiwari,
Advocate

versus

State & Anr.

..... Respondent

Through: Ms. Mukta Gupta,
Advocate for R-1
Mr. Asit Kumar Roy, Advocate
with Mr. Sandeep Sharma,
Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. By this writ petition filed under Articles 226/227 of the Constitution of India r/w Section 482 Cr.P.C., the petitioners seek to challenge the illegality and impropriety of the summoning order

dated 19.7.2007 passed by the Court of Shri Kuldeep Narain, M.M., New Delhi and the order dated 22.11.2007 passed by Shri P.S. Teji, Additional Sessions Judge, New Delhi in exercise of his revisional powers.

2. The brief facts as set out by the respondent complainant in her complaint filed before the concerned Magistrate are as under:

The Respondent No. 2 - Complainant is employed with Pusa Polytechnic, New Delhi as a lecturer and also holds an additional post of Chief Security Officer of Pusa Campus whereby she was entrusted the job to remove the unauthorized structures and constructions within the campus of ITI Pusa. On the intervening night of 10/11.03.2007 complainant's car namely Maruti Alto, which was parked in front of house of the complainant caught fire. The complainant and her 12 years old daughter saw the car burning and as per their version the petitioner had put fire in the petrol pipe of the car and when they raised alarm, they were threatened by the petitioners with dire consequences to be told that the next target could be the complainant or her daughter if she did not stop her action of removal of encroachment. The

complainant called the Fire Brigade also and they filed a report dated 11.3.2007. It is the case of the complainant that she approached the SHO as well as higher officials and also applied through RTI for the registration of an FIR but her appeal was disallowed by Sh. Rajesh Kumar Appellate Authority, Joint Commissioner of Police vide order dated 02.04.2007. Aggrieved with the same the complainant made a complaint to the court of Ld. MM and vide order dated 19.7.2007 the court of MM summoned the present petitioners. Aggrieved with the said order, the petitioners preferred revision which was dismissed by the Ld. Additional Sessions Judge vide order dated 22.11.2007 and feeling aggrieved with the same present petition has been preferred.

3. Mr. Ramesh Gupta, Senior Advocate with Mr. Rakesh Tikku, & Manish Tiwari, argued that the instant complaint is nothing but an abuse of process of law and has been instituted by the complainant/respondent No.2 as she had been nursing personal grudge against the petitioners for the reasons best known to her as would be evident from the other circumstances as well. It is alleged by the petitioners that the complainant/Respondent No.2 misled the trial court and has deliberately concealed the

factum of filing of a Civil Writ Petition on the same set of allegations and imaginary story being W.P. (Civil) No. 4162 of 2007 wherein she sought investigation of the case. The counsel for the petitioners submitted that the Ld. M.M. failed to appreciate that deposition of CW-1 and CW-2 are in contradiction with each other since CW-2 has stated that she had informed her mother after seeing her car being burnt whereas CW-1 the complainant/Respondent No.2 in her statement stated that she had seen all the three persons running away after burning her car, and such contradictory statements have no incriminating value qua the petitioners. Moreover, the Ld. M.M. failed to appreciate that even the so called independent witness CW-3 clearly stated that nobody had told him that the petitioners had put the car of the complainant/respondent No.2 on fire, the counsel contended. The counsel for the petitioners further urged that subsequently CW 3 stated that he does not know much about the instant case and therefore the independent witness, who was examined by the complainant/respondent No.2 failed to give any strength to her case. It is further stated that the ld. M.M. failed to appreciate that along with his report, SI Jaipal Singh has placed on record the

letter written by the complainant respondent No.2 herself to the SHO P.S. Inderpuri, New Delhi admitting the fact that she had not seen any one at the site of the incident nor she had any doubt on any one who could be held responsible for the said incidence. The counsel for the petitioners submitted that the Ld. M.M. erred in disbelieving the report of two independent government agencies and believed the version of the Complainant/respondent No.2 as gospel truth. Counsel relied on the following judgments in support of his submissions.

- (a) M/s. Pepsi Food Ltd. vs. Special Judicial Magistrate 1998 Cr LJ 1 (SC).
- (b) Smt Nagawwa vs. Veernanna Shivalingappa Konjalgi 1976 Cr LJ 1533 (SC).
- (c) Madhavrao Jiwarelrao Scindia vs. Sambhajirao Chandrarajirao Angre 1988 SCC (Cr) 234.
- (d) Dilawar Babu Kurane vs. State of Maharashtra AIR 2002 SC 564.
- (e) Chandra Deo Singh vs. Prokash Chandra Bose 1963 (2) Cr LJ 397 (SC).

- (f) Smt Jancy Nelson D'souza vs. Nelson D'souza 2004 Cr LJ 1690 (Bom).
- (g) Kanshiram vs. State 2000 IV AD (Delhi) 495.
- (h) Surinder Suri vs . State of Haryana 1996 (2) RCR 701.
- (i) Inder Mohan Goswami and another vs. State of Uttaranchal 2007 V AD (Cr) (SC) 369.

4. Per contra, Mr. Asit Kumar Roy, counsel for the respondent no. 2 contended that it is an admitted fact that the petitioners are influential and highly placed officials who had carried illegal constructions at their respective residential premises and encroachments on Government land. It was further urged that the trial has already commenced and only two eyewitnesses have been examined so far and therefore at this stage this court should be hesitant to exercise its jurisdiction under Article 226/227 of the Constitution of India. The counsel for Complainant/respondent No.2 also contended that it is not obligatory on the part of the Id. Magistrate to act on the police report as looking into the facts of a case the Magistrate may accept or reject the same. It was further submitted by the counsel for the Complainant/respondent No.2

that SI Jaipal Singh did not investigate the matter properly as he did not know even the identity of the petitioners. It was averred that SI Jaipal in his report stated that Vimal Dimri is the Principal of ITI Pusa, which is totally wrong, as the post of Principal of ITI Pusa does not exist, secondly, the name of other petitioner is given as R.B. Sharma, Director ITI Pusa which is again wrong, as the name of the said petitioner is Sh. R.N. Sharma and he is the Director of Delhi Jal Board and the petitioner No.1, Sh. R.K. Mishra, Officer was on Special Duty to Vice Chairman, DDA but as per report of SI Jaipal, he was OSD to Deputy Commissioner, DDA which is totally wrong. The counsel urged that the officials of Fire Service have no authority to make a report regarding cause of fire as this is the duty of the Investigation Officer of the Police Department to investigate the case and register FIR u/s 435 & 436 (Mischief by fire or explosive substances with intent to destroy) and section 4 of Prevention and Damage of Public Property Act. Hence, the report dated 23.03.2007 issued by the Fire Services baseless and warranted. In fact, no investigation to know the cause of fire was ever conducted by police or any of the authority till today. It was also submitted that the Ld. M.M. himself got

recorded the statement of the complainant/respondent No.2 and her witnesses to know the reality and thereafter, being fully satisfied, issued the summoning order considering the case of the complainant as genuine and bonafide merited to take cognizance against the accused/petitioners. The counsel for complainant/respondent No.2 further submitted that the Ld. ASJ after hearing both the parties correctly dismissed the said revision petition of the petitioners. The counsel relied on the decision of the Apex Court in **Satpathy vs. Ram Aggarwala and ors (1987) 4 SCC 58.**

5. Ms. Mukta Gupta, standing counsel for the State urged that inconsistencies in the complaint viz a viz depositions of the complainant and her daughter before the court, are so apparent and noticeable not warranting summoning of the petitioners.

6. I have heard learned counsel for the parties and carefully gone through the record.

7. The Apex Court in **M/s. Pepsi Food Ltd. (Supra)** while examining the scope and power of the High Court under Article

226/227 of the Constitution of India and Section 482 Cr.PC. held as under

It is settled that High Court can exercise its power of Judicial review in criminal matters. In *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, this Court examined the extraordinary power under Art.226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. While laying down certain guidelines where the Court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report of the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Art. 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This Article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Arts. 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Art. 227 and Section 482 of the Code it may not always be necessary to invoke the provisions of Art. 226. Some of the decisions of this Court laying down principles for the exercise of powers

by the High Court under Arts. 226 and 227 may be referred to.

8. In the above judgment the Apex Court cautioned for not setting the machinery of criminal law into motion just as a matter of course by the Magistrates as summoning of any person in a criminal case is a serious matter.

9. Now with this settled legal position that the summoning of an accused being a serious matter, the next question would arise as under what circumstances and based on what material, the Magistrate can direct summoning of a person accused of an offence in the complaint. The object of Section 202 Cr.P.C. is to prevent harassment of innocent persons by indiscriminately issuing processes against them. It is a well settled legal position through catena of decisions of the Apex Court that at the stage of issuing the process the Magistrate is primarily concerned with the allegations made in the complaint and the evidence led in support of the same, and based on such material if the Magistrate finds there is a prima facie case then he can direct to issue the process against the accused person. The stage of issue of process does not warrant a meticulous or detailed examination of the evidence to find out as to whether the allegations made in the complaint and

the evidence led in support thereof would result into ultimate conviction of the accused or not. At the stage of enquiry under Section 202 Cr.P.C., the Magistrate has to find out as to whether prima facie the case has been disclosed against the accused or not based on the allegations made in the complaint and the evidence led by the complainant in support of such allegations or after the enquiry conducted by the Magistrate with the help of the police or otherwise. The Magistrate thus has been conferred a wide discretion in the matter but such a discretion has to be exercised by the Magistrate very carefully based on sound judicial principles and not in a mechanical and ritualistic manner. Thus responsibility of the Magistrate at the stage of summoning is very heavy and onerous. The Magistrate is required to carefully examine as to whether in the face of allegations in the complaint and the evidence led in support thereof, wherever prima facie case is made out against the accused and if allegations made in the complaint appear to be patently absurd and inherently improbable then the Magistrate has to remind himself that unwarranted summoning of a person certainly labels him as an accused tarnishing his image in the society and therefore, the Magistrate may dismiss the

complaint under Section 203 Cr.P.C. after briefly recording the reasons for the same. It would be appropriate to refer the guidelines laid down by the Apex Court in **Smt. Nagawwa Vs. Veeranna Shivalinagappa Konjalgi (Supra)**.

“It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Sections 202 of the CrPC which culminates into an order under Sections 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

- (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

- (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The case mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

10. Based on the above legal position, let me now examine as to whether learned Metropolitan Magistrate in the facts of the present case has exercised his jurisdiction legally and correctly and also as to whether the revisional court also correctly appreciated the dictum of law.

11. On both sides are the government officials. The respondent complainant is a Lecturer (Maths) in Pusa Polytechnic, New Delhi and is a well educated person while on the other hand the petitioners respondents are also Government officers posted on

responsible positions. The respondent complainant was also entrusted with the additional responsibility to discharge duties on the post of Chief Security Officer at ITI Pusa Campus and in that capacity she was authorized to take action against any unauthorized construction/encroachment if carried out by any of the resident of ITI Pusa Campus. As per the complaint filed by the respondent, the present petitioners were found to have raised illegal construction in their respective premises as per the joint survey carried out by the nodal officer of the PUSA Polytechnic and PWD, and notice dated 8.3.2007 was served upon the petitioners before taking any action of demolition/removal of unauthorized constructions/encroachment existing in their respective premises. As per the said complaint, all the three petitioners had threatened the respondent complainant for her life and property if she would take any action of demolition pursuant to the said notice dated 8.3.2007. In the backdrop of the said tussle on the intervening night of 10 and 11 March, 2007, the Maruti Car of the respondent complainant which was parked in front of her house caught fire which led the respondent to call the PCR and the Fire Brigade. Both the PCR and the Fire Brigade reached at the site. As per the

respondent complainant she gave statement to the police official Mr. Jaipal of P.S. Inderpuri. Delhi Fire Service also gave their report about the cause of the said incident. The respondent complainant in the said complaint also stated that in the evening of 11th March, 2007 one Mr. Bhairo Dutt, resident of F-33, ITI Pusa Campus forcibly took the signature of respondent complainant on a letter wherein it was stated that the respondent complainant had not seen anyone at the site of the incident and she raised no doubt on any one who could be held responsible for the said incident.

12. As per the counsel for the petitioners, by this letter alone it would be evident that the respondent complainant has wrongly and falsely implicated the present petitioners in the said complaint and on the other hand as per the counsel for the respondent the said letter was got signed by Bhairo Dutt and the petitioner Mr. R.K. Mishra by the use of force and pressure upon her.

13. Before reaching to any final conclusion with regard to the genuineness and truthfulness of the facts as discussed in the complaint it would be relevant to reproduce the various stands taken by the respondent complainant and the witnesses adduced

by her. The first statement of respondent complainant Dr. Kiran Kushwah made before the police official is as under:

“My daughter woke me up and told me that the car has caught fire. I woke up and went to the balcony from where I saw that the car had caught fire. I immediately called up Mrs. Bhatti as well as my daughter called the PCR and the fire brigade and the PCR reached which extinguished the fire and you recorded my statement. I am sure about involvement of 1)Sh. Vimal Dhimri, 2) R.N. Sharma, 3)R.K. Mishra in the incident as they have encroached upon the govt. land which is inside the Pusa and I being the Chief Security Officer following my duties have ordered for removal of the encroachment and had given a notice for the same on 12.03.07. And to take the revenge of this illegal construction these aforesaid persons have put fire on my car.”

14. Letter dated 11.3.2007 addressed by respondent Dr. Kiran Kushwaha to the SHO, P.S. Inderpuri, New Delhi (letter alleged to have been signed by the respondent under coercion) is reproduced as under:

“It is informed that I have not seen any one at the site of above incidence and it is further informed that I have no doubt on anyone who can be held responsible for the above incidence.

In view of the above, it is requested to lodge an FIR to investigate the above matter.”

15. Para 8 of the complaint is reproduced as under:

“That further on the intervening night of 10th and 11th March, 2007, all the three persons namely 1. Mr. R.K. Mishra r/o E-12. Sh. Vimal Dimri r/o E-11 and 3. Sh. R.N. Sharma r/o E-17 put fire in the petrol pipe of the car valued (Rs.3,06,000/-) of the Complainant make Maruti Alto vide Regn. No. DI-9C-N-0742, which was parked in front of the house of the complainant in a planned way in the presence of the complainant and her 12 years old daughter. The complainant and her daughter raised alarm, shouted while they threatened with dire consequences that the next target could be the complainant and her daughter if she still does not stop her action of removal encroachment in their possession premises.”

13. Relevant portions of depositions of CW1, CW2 and CW3 are reproduced as under:

CW-1 Dr. Kiran Kushwaha

Afterwards on the intervening night of 10/11.3.1997 my daughter Kr. Divya informed me at about 11.30 p.m. that my car is engloved with fire. She also told me that Mr. Vimal Dimiri had struck the fire to the car on hearing this I had come in the balcony with my daughter where I saw that my car was burning and Mr. Vimal Dimri. R.K. Mishra and R.N. Sharma were standing near the burning car. We started called for help but nobody turned out. My Car was parked at a distance of about 30-40 feet opposite the road side. We could not make it out from such a distance whether either of the accused persons were having anything in their hands or not. AT that time nobody else except these three persons were present near the burning car. I have not noticed anybody else at that time. Subsequently on hearing our noice the locality people started putting their lights on and thereafter, all the three persons had ran away from the spot. We also made a call to police at 100 number and also called fire brigade. Besides me and my daughter nobody has seen aforesaid three persons.

CW-2 Kumari Divya

In the intervening night of 10-11/3/97 I had seen from the window of my room that my car was burning and Mr. R.K. Mishra, Vimal Dimri and R. N. Sharma were standing near the burning car and they all were laughing. The incident occurred at around 11.30-12 O'clock. I immediately informed my mother. We came to the balcony. We started making noise. We have also asked all the three persons to help us in putting off the fire of our car to which Mr. Vimal Dimri stated that they will not help at all. He also stated that he had put the fire to our car. Thereafter, on making noise the other locality people also gathered at the spot and all the three aforesaid persons had run away from the spot. All the three aforesaid persons abused my mother in my presence.

CW-3 Mr. G. Dannel

I had come out of my house after hearing the voice of Dr. Kiran Kushwa and then I notice that a car was burning. I have not seen any person putting fire to the car of Dr. Kiran. Many persons have gathered on the spot. I had seen Mr. Vimal Dimri quarrelling with Dr. Kiran at that moment.

14. A bare look at the aforesaid statements made by respondent No. 2, her daughter and the witness Mr. G. Dannel would demonstrate the inconsistent and fledgling stand of the above material witnesses with regard to the exact facts leading to the incident of fire. In the very first statement of respondent No. 2 made to the police she only raised suspicion about the involvement of the present petitioners in the said incident. Nowhere in the said

statement of the complainant/respondent No. 2 it was alleged by her that all the said three petitioners were seen putting fire to the car, but taking a complete somersault in para 8 of the complaint all the said three petitioners were imputed with the act of putting fire in the petrol pipe of the car in the presence of the complainant and her 12 years old daughter. Slipping from her stand again in her deposition before the Court the complainant mentioned about the presence of these three petitioners near the burning car and not that the car was burnt by them. Her daughter CW 2 Kumari Divya also deposed towing the line of her mother except the fact that Mr. Vimal Dimri was alleged to have pronounced his admission of putting fire to the said car to CW 2. CW 3 Mr. Dannel, who was immediately called by the petitioner also did not personally see the persons putting fire to the car.

15. In the face of such inconsistent stands taken by the complainant, her daughter and the said witness, could the Magistrate direct summoning of the petitioners as accused persons. As already discussed above, the order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and has not acted in a careless and cavalier fashion to

direct summoning of the accused. Undoubtedly, the Magistrate at the stage of issuing process must not enter into a detailed discussion of the merits or demerits of the case nor at that stage the Court is to meticulously examine as to whether the evidence placed by the complainant is adequate for ultimate conviction of the accused. However, at the same time the Magistrate at that stage has to satisfy himself as to whether a prima facie case is made out against the accused persons or not. Necessarily to arrive at such a conclusion the Magistrate has to consider the material placed on record by the complainant and the evidence produced on record through the investigation/inquiry if directed by the Magistrate. The words "sufficient ground" used in Section 202 of the Cr.P.C. have to be construed to mean that the Magistrate has satisfied himself that a prima facie case is made out against the accused to summon him in the case. However, if after taking into consideration the allegations made in the complaint, evidence adduced by the complainant and enquiry if any, conducted by the police, the Magistrate prima facie finds that no offence is made out or the allegations based on such material the Magistrate finds that

there are inherent contradictions and improbabilities, then in a such like case, process if issued would be illegal, unjust and capricious.

16. Besides the above contradictions another noteworthy feature is that CW1 stated before the Court that mother-daughter duo could not make out from the distance of 30-40 feet from the balcony i.e. where they were standing and the place where the car was parked, as to whether either of the petitioners had anything in their hands or not. Had the petitioners ignited the fire to the petrol pipe after cutting the petrol pipe then there must be some tools in their hand. The relevant portion of the statement of CW1 in this regard is as under:

My Car was parked at a distance of about 30-40 feet opposite the road side. We could not make it out from such a distance whether either of the accused persons were having anything in their hands or not.

17. It is also noticeable that the Magistrate did not feel satisfied to issue the process based on the allegations made in the complaint and evidence led by the respondent/complainant and, therefore, directed the concerned SHO to investigate the case of the complainant, but surprisingly the process was issued against the petitioners even after the police found the complaint to be false

and motivated against the present petitioners. The learned Magistrate also ignored the report of the fire department, who in their report clearly observed the cause of fire to be because of 'short circuit'.

18. The aforesaid factual background of the case would clearly show that the allegations leveled by the complainant against the present petitioners are more based on assumptions besides being patently absurd and improbable. It appears that the respondent/complainant haunted by her action of removal of the illegal encroachment in the premises of these petitioners, perceived and presumed that the car could be only burnt by these very petitioners. No doubt these officers also must be nursing a grudge against the complainant for the upright actions of the respondent complainant, but to attribute them with such a grave act of putting the vehicle of the complainant to fire would be totally far fetched and not expected of such Government officials in the absence of any direct or corroborative evidence to this effect.

19. In view of the above discussion, the present petition is allowed and the summoning order dated 19.07.2007 and order of revision dated 22/11/2007 are hereby quashed.

August 17,2009

KAILASH GAMBHIR, J.