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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 13, 2010

Date of Order: August 30th 2010

+ CrI.MC No. 471/2009

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30.08.2010

J.L. Goel & Ors.

...Petitioners

Versus

Rajesh Kumar Jain & Anr.

...Respondents

Counsels:

Mr. M.A. Khan and Mr. Mir Akhtar Hussain for petitioner.

Mr. O.P. Saxena, Additional Public Prosecutor for respondent/State.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This petition under Section 482 Cr.P.C has been preferred by the petitioners for quashing a criminal complaint no.115/2007 under Section 109/120B/466/468 IPC and for setting aside the summoning order dated 30th November 2007 passed by learned MM, Karkardooma Courts, Delhi.

2. Brief facts relevant for the purpose of deciding this petition are that petitioner no.6 Mrs. Anuradha Jain was married to respondent no.1 who is the complainant in complaint number 115 of 2007. A complaint lodged by her with CAW Cell against respondent no.1 and other family members of respondent no.1 culminated into an FIR No.244 of 1995 under Section 498A/406 read with Section 34 IPC and trial is going on in that case. The

respondent no.1 filed the impugned complaint against the petitioners alleging that during trial of FIR No.244 of 1995, the wife, in collusion with other petitioners and in collusion with the record keeper removed the original complaint and got it substituted with an improved complaint, later she again got removed the improved complaint and substituted it with the original complaint. During this interval, the complainant had obtained a certified copy of the improved complaint. An application was made by respondent no.1 to the trial court under Section 340 read with Section 195 Cr.P.C for filing a complaint against the petitioners. The trial court, however, refused to lodge a complaint under Section 340 Cr.P.C, by a speaking order. The complainant (respondent no.1 herein) then filed a complaint under Section 156(3) Cr.P.C before the Metropolitan Magistrate and the learned MM recorded statement of respondent no.1 as CW-1 and after recording the statement of respondent no.1, summoned the petitioners under Section 466,468, 109, 120B IPC.

3. The record shows that respondent no.1 (husband) during trial before the trial court of FIR No.244 of 1995; tampered with the record of court and removed certain original documents and thrown them into the dustbin. An FIR in this respect was registered at the instance of the trial Court against respondent no.1 (husband) under Sections 380,204,411 and the trial of that case is going on against the respondent no.1.

4. It is submitted by counsel for petitioner that learned MM before whom respondent no.1 filed the complaint alleging replacement/ removal of original complaint by an improved one and then again putting back the original complaint in the judicial record could not have taken the cognizance of the offence in view of bar under Section 195 (1)(b)(ii) of Cr.P.C since the offence was committed during trial of case FIR No.244 of 1995 within the cognizance of the Court concerned hence it was the trial court who could alone have filed a complaint under Section 340 Cr.P.C. The other submission made by

the counsel for the petitioners are that the complaint filed by respondent no.1 does not disclose any cause of action against the petitioners other than respondent no.1 i.e. Mrs. Anuradha Jain.

5. I find force in both the contentions raised by the counsel for the petitioners. A perusal of statement of CW-1 (respondent no.1 herein) would show that he had alleged that Mrs. Anuradha Jain in collusion with court staff prepared a forged and fabricated document during the court proceedings and manipulated replacement of this document into the court file by removing the original complaint and thereafter getting this forged complaint again replaced with the original complaint. He stated that he obtained certified copy of the replaced complaint. He further submits that Mrs. Anuradha Jain not only got prepared an improved complaint but also obtained stamp of CAW Cell on it. It is his case that the trial court passed an order dated 24th March, 2009 in respect of missing judicial record.

6. The allegations made by respondent against the petitioners (except petitioner no.6) are that they advised Mrs. Anuradha Jain to commit this forgery with the aid of court staff. On the basis of this statement, learned MM summoned all the petitioners observing that the Supreme Court in **(2003) 4 SCC 139** laid down that there was no necessity of giving reasons at the time of summoning.

7. I consider that learned MM grossly exceeded his powers and jurisdiction. It has been observed by this Court time and again that initiation of criminal proceedings should not be done in a casual manner by any court and the courts must not act as a tool in the hands of unscrupulous elements. There is no doubt that reasons are not required to be given by the Courts of MM at the time of issuing summoning order, however, the learned MM was supposed to ensure that there was sufficient material disclosed by the

complainant in the complaint and during evidence, warranting summoning of the accused. A complainant may name 20 persons as accused. A Court of MM cannot blindly summon all the 20 persons without going into the fact whether those 20 persons had been ascribed a role in commission of the offence or not. The learned MM in this case seems to have summoned the petitioners only because their names were mentioned by the complainant in the array of parties, despite the fact that the complainant had not spelt out what was the role played by them in forging the documents or in replacement of documents. I, therefore, find that the order of learned MM summoning the petitioners no.1 to 5 was a mechanical order and the learned MM acted as a tool in the hands of respondent no.1. The Supreme Court judgment relied upon by learned Magistrate did not give him jurisdiction or authority to summon everybody named in the complaint whether he had a role in the crime or not. The relevant part of judgment *Dy. Chief Controller of Imports & Exports v Roshanlal Agarwal and ors* (2003) 4 SCC 139, relied upon by the learned MM, reads as under:

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding, and not, whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v M/s Mohan Meakins Ltd. and Ors. 2000 CrL.L. J. 1799 and after noticing the law laid down in Kanti Bhadra Shah v State of West Bengal 2000 CrL.L. J 1746, it was held as follows:

“The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while

issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”

8. It is obvious from this judgment that the learned Magistrate had to satisfy himself that there were sufficient grounds for proceeding against the accused. Allegations were there against the petitioner no.6 indulging in forgery as she was a complainant but there was no material placed before the learned Magistrate as to how the petitioners no.1 to 5 were involved in forgery. The summoning order qua them was thus absolutely bad in law and amounted to gross misuse of judicial powers by learned Magistrate.

9. It is an undisputed fact that the allegations against the petitioner no.6 Mrs. Anuradha Jain are in respect of committing forgery in the court record. Section 195 (1) (b) (ii) Cr.P.C reads as under:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No court shall take cognizance-

(a)xxxxx

(i) xxxxxxxxxxxx

(ii) Of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or”

10. A bar on taking cognizance of offences regarding administration of justice and offences relating to proceedings in any court or offences described in Section 463 or 471, 475 or 476 (when such offences are alleged to have been committed in respect of

documents produced or given for evidence in a proceeding by a Court) has been imposed by Section 195 Cr.P.C and cognizance can be taken only on a complaint made by the concerned court.

11. The alleged offence in this case was directly related to the court record. The allegations made by the petitioners are that efforts were made to tamper the court record and the original complaint (FIR) was replaced by an improved FIR and later on improved FIR was again re-substituted by original complaint. Under these circumstances, I consider that the learned Magistrate could not have been taken cognizance of the offence unless a complaint under Section 340 Cr.P.C had been made by the court in writing on this behalf.

12. Counsel for the respondent drew my attention to *Sachitanand v State of Bihar (1998) 1 RCR (Crl.) 823* wherein the Supreme Court observed that the bar contained in Section 195(1)(b) (ii) was not applicable to a case where forgery of document was committed before the document was produced in the court. He also relied upon *Jitendra Chandrakant Mehta v M/s Shamrock Impex. Pvt. Ltd. and other C.W. P. No.2198 of 2005 decided on 3rd May, 2006*, wherein Bombay High Court observed that bar of Section 195 was not applicable to a case when documents already forged was produced by accused in support of his case.

13. It is not a case where the petitioner no.6 had produced the forged documents in evidence or had filed before the Court some forged documents. In fact, it is a case where allegations made by the respondent no.1 against the petitioner no.6 are that the petitioner no.6 in connivance with the court staff had replaced/ substituted a complaint /FIR with an improved one and again substituted the improved complaint/FIR with the original one and in the meantime he got certified copy of it. In fact, respondent no.1

himself also had been fiddling with the court record. It would be appropriate to reproduce an order dated 26th November 2009 passed by learned ACMM which reads as under:

“(8) Perusal of record shows that accused is facing trial in a case FIR bearing number 244 of 1995, P.S. Preet Vihar, under Sections 498A/406 IPC. On 28.01.01 Ahlmad Mr. Vijay Kumar Marwa made a written complaint to his presiding officer Ms. Shailener Kaur the then Ld. MM (Mahila Court) Karkardooma Court, Delhi wherein he reported that on the said day accused Rajesh Kumar Jain i.e. the present applicant came for inspection of the case file and while inspecting the judicial file had torn a few pages of the judicial file and thereafter thrown the papers outside the court room. The Ahlmad with the help of Naib Court Vinod was able to retrieve a few papers but the remaining papers could not be retrieved. The matter was reported to the Ld. District and Sessions Judge, Delhi who ordered fact finding inquiry on this issue and Shri Dilbagh Singh, the then ACMM was directed to conduct the inquiry. A detailed inquiry was conducted. The inquiry report was submitted to the Ld. District & Sessions Judge, Delhi. Ms. Shailender Kaur, the then Ld. MM was directed to order for registration of FIR against accused/ applicant Shri R.K. Jain. Accordingly a complaint was made to the Station House Officer, P.S. Anand Vihar and a case FIR bearing number 382 of 2001 under Sections 379 IPC Police Station Anand Vihar was registered against the accused. The investigation was conducted as per law and the accused was found involved in the commission of offence in the said case, accordingly charge sheet was filed against him and the same is pending trial.”

14. The Court where the trial is going on has already lodged an FIR about missing/ replacement of documents. If there was any effort to fiddle with the court record, it was within the jurisdiction of that court to order an inquiry and proceed against the person responsible for it. The court of another MM who has not been sent a complaint by the trial court cannot be in a position to hold an inquiry into the offence committed in

administration of justice without proper complaint from the court where this has taken place. I, therefore, consider that the learned MM could not have taken cognizance of the complaint filed by respondent no.1.

15. In the result, the petition is allowed and the criminal complaint no.115/2007 under Section 109/120B/466/468 IPC; the summoning order dated 30th November 2007 summoning the petitioners for offences under Sections 109/466/468/120B IPC; the order dated 19th November 2008 issuing NBWs against the petitioner no.3; the order dated 3rd January 2009 issuing process under Section 82 Cr.PC against the petitioner no.3; and proceedings consequent to the criminal complaint no.115 of 2007 pending in the court of Shri Lalit Kumar, MM, Karkardooma Courts, Delhi are hereby quashed.

16. The petition stands allowed.

August 30, 2010
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SHIV NARAYAN DHINGRA, J