

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No.6704/2006

% Judgment decided on: 20th December, 2010

JAMAL NASIR

.....PETITIONER

Through: Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Adib M. Khan, Adv.

Versus

STATE & ANR.

.....RESPONDENTS

Through: Mr. M.P. Singh, APP &
Mr. V.P. Singh, Adv.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J. (Oral)

1. Petitioner seeks quashing of the FIR No. 297/2006 under Section 500 IPC registered at Police Station Timarpur by way of present petition under Section 482 of Code of Criminal Procedure (Cr.P.C.)

2. Short legal question which needs to be answered in this petition is "whether FIR can be registered by the Station

House Officer of a Police Station in a non-cognizable offence, without obtaining permission of the Metropolitan Magistrate of the concerned area, where offence had allegedly been committed?”

3. Factual matrix of the case is that the respondent No. 2 had filed a complaint with the concerned Police Station alleging therein that petitioner, who is an Advocate and Retainer of North Delhi Power Limited (NDPL) threatened him by saying “TUM VAHI SARDAR HO JO NDPL KE UPER BAHUT SE CASE FILE KAR DETE HO ME DEKHTA HU TUM KITNE CASE FILE KARTE HO”. When respondent No. 2 requested the petitioner not to speak in that manner with an old man of aged about 68 years, he yelled “you old cheat and fraud I will pull out your beard and put it into your buttock”. Respondent No. 2 protested by saying that he will lodge a complaint against him with the higher authorities, at which petitioner became furious and uttered “SARDAR TU JA YAHA SE, TERE KO MEIN JAAN SE MAR DUNGA, VO COMPANY WALE MERE KIYA KAR LENGE”. It was alleged that on account of aforesaid spoken words by the petitioner, respondent No. 2 had been defamed in the society, inasmuch

as his reputation in the eyes of the persons present there was lowered.

4. On the basis of said complaint, FIR in question has been registered on 21st June, 2006. It may be noted here that respondent had also filed an application under Section 156(3) Cr.P.C. before the Metropolitan Magistrate on 20th March, 2006 wherein SHO was called upon to submit action taken report. On 22nd June, 2006, SHO replied in the court that FIR had been registered under Section 500 Cr.P.C. Perusal of Trial Court Record shows that at no stage direction was given to SHO Police Station to register FIR.

5. Perusal of 1st Schedule of the Code of Criminal Procedure, 1973 (Cr.P.C.) makes it abundantly clear that offence under Section 500 IPC is a non-cognizable offence.

6. Section 155 Cr.P.C. reads as under:

“Information as to non-cognizable cases and investigation of such cases.-(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

7. Perusal of sub-section 2 of Section 155 Cr.P.C. makes it clear that no police officer can investigate a non-cognizable offence without the order of a Magistrate having power to try such case or commit the case for trial. In view of the above legal position, Station House Officer of the Police Station Timarpur could not have registered the case and investigated the same. Admittedly, in this case no such permission under sub-section 2 of Section 155 Cr.P.C. had been taken by the concerned police officer.

8. In *Kanshi Ram vs. State*, 86 (2000) Delhi Law Times, 609, a Single Judge of this Court has held that where FIR discloses a cognizable as well as non-cognizable offence, the police is not debarred from investigating any non-cognizable offence which may arise on the same facts. He can include

that non-cognizable offence in the charge-sheet which he presents for a cognizable offence. But if the information discloses only a non-cognizable offence, the police officer cannot investigate the offence without the requisite sanction under sub-section 2 of Section 155 Cr.P.C. In the said case, from the facts disclosed in the FIR, only commission of an offence under Section 323 IPC was disclosed. In order to obviate the mandatory provision of sub-section 2 of Section 155 Cr.P.C., Station House Officer had added certain sections of cognizable offence. The learned Single Judge came to the conclusion that in the facts of the case only non-cognizable offence was disclosed, thus, quashed the complaint.

9. Coming back to the facts of this case, SHO had registered the case without any permission and/or direction of the Metropolitan Magistrate as envisaged under Section 155 (2) Cr.P.C. Thus, the FIR 297/2006, which discloses commission of a non-cognizable offence is liable to be quashed.

10. Bare reading of such Section 156(3) makes it clear that a non-cognizable offence cannot be a matter for investigation by the police under the said provision, which otherwise, deals with cognizable offences. Relevant it would be to refer to

Section 156 of the Cr.P.C., at this stage, which reads as under:

“156.(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.”

11. A perusal of above extracted provision clearly shows that an officer incharge of a police station, without an order of the Magistrate, can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. This power vests in the incharge of police station by virtue of sub-section 1 of Section 156 of the Cr.P.C. It is further seen that by virtue of sub-section 3 of Section 156 of the Cr.P.C., any Magistrate empowered under Section 190 of the Cr.P.C. may order such an investigation as mentioned above. A conjoint reading of sub-sections 1 and 3 of Section 156 of the Cr.P.C. makes it

clear that investigation under Section 156(3) would be permissible only in respect of a cognizable offence. Thus, FIR in question could not have been registered by the SHO, Police Station Timarpur merely because Magistrate had called upon it to submit an action taken report, on the application filed by the respondent under Section 156(3) of the Cr.P.C.

12. For the foregoing reasons, FIR No. 297/2006 under Section 500 IPC registered at Police Station Timarpur is quashed.

13. Petition is disposed of in the above terms. Trial Court record be sent back forthwith.

A.K. PATHAK, J.

DECEMBER 20, 2010

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