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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: September 30th, 2010

Date of Order: November 19, 2010

+ Crl.M.C. No.2175/2010

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Dr. Shrikant Kaushika

19.11.2010

...Petitioner

Versus

State & Anr.

...Respondents

Counsels:

Mr. Ajay Kumar for petitioner.

Mr. Sunil Sharma, APP for State along with ASI Prahlad Singh for State/respondent.

Mr. Manjeet Singh Bhamra, Advocate for respondent no.2

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. By way of present petition under Section 482 Cr.P.C the petitioner has assailed order dated 1st December 2009 whereby the revision petition filed by the petitioner assailing an order dated 6th August 2009 passed by learned MM was dismissed. .

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner was working as Orthopedic Surgeon in DDU Hospital at Hari Nagar. At the relevant time i.e. on 13th September 1998 while petitioner was in casualty, a patient in the name of Asha Ram was brought to casualty and was attended by the petitioner immediately without caring for necessary formalities like MLC, admission card etc. The patient was operated upon and treated in view of the seriousness of the injuries sustained by him. However, the attendant of the patient i.e. respondent no.2 was not satisfied with the

treatment and became violent and abusive to the doctors on duty including the petitioner herein. It is stated that respondent no.2 not only continued his violent behaviour and abusive language resulting into disruption of functioning of casualty, he threatened doctors on duty including the petitioner with dire consequences. He also manhandled not only the petitioner but also other employees of DDU Hospital which resulted into minor injuries to the petitioner and the employees. The petitioner, after the incident, reported the matter to Medical Suptd. of DDU Hospital who, after satisfying himself about the facts, lodged a criminal complaint at Police Station Hari Nagar and an FIR 737 of 1998 dated 14th September 1998 under Section 186,353, 355 read with Section 34 IPC was registered. The respondent no.2 also got an FIR No.733 of 1998 under Section 342/506/323 registered against the petitioner and other doctors. The investigation of the two FIRs was assigned to different investigating officers. While challan under Section 173 Cr.P.C in respect FIR No.733 of 1998 (filed by respondent no.2) was filed in the Court on 6th January 1999, the challan in respect of FIR No.737 of 1998 (filed by the petitioner) was not filed by the investigating officer for quite long time and it was filed only on 21st August 2002. Learned MM while taking cognizance found that the offences were punishable maximum for a period of three years punishment and the challan was filed after a period of three years, so the learned MM vide order dated 6th August 2009 refused to condone the delay of one year in filing the challan observing that the delay was not explained. The only explanation given for condonation of delay by the investigating officer was that he had handed over the challan to the Naib Court in time but the Naib Court did not file it in the court. The trial court considered that this was not a reasonable explanation of delay in filing the challan and refused to condone the delay. In revision, the learned Additional Sessions Judge observed that the petitioner had no locus standi to challenge the impugned order since the petitioner was only a witness and a witness had no right to assail the order.

3. Section 473 of Criminal Procedure Code reads as under:

“473. Extension of period of limitation in certain cases.

Notwithstanding anything contained in the foregoing provisions of this Chapter, any court may make cognizance of an offence after the expiry of the period of limitations, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

4. In ***Duvuru Jaya Mohana Reddy and another vs. Alluru Nagi Reddy and others***, 1993(2) Crimes 275 , the Supreme Court observed that Section 473 has a non-obstinate clauses which means that the said Section has overriding effect on Section 468 Cr.P.C and the Court can take cognizance of the offence not only when it is satisfied, on facts and circumstances of the case that the delay has been properly explained, but even in absence of proper explanation when the court is satisfied that it was necessary to condone the delay in the interest of justice .

5. In view of the above legal position, I consider that the learned MM was not only supposed to consider whether the delay had been properly condoned or not but also to see that whether the condonation of delay was in the interest of justice or not when in respect of the same incident, the respondent no.2 had filed a cross FIR against the petitioner herein and a chargesheet in that FIR was filed by the investigating officer within time and cognizance had been taken. It was thus in the interest of justice that the delay on the part of investigating officer in this case should have been condoned in view of cross FIR filed by respondent no.2 so that the petitioner on whose complaint the present FIR was filed prior in time than the FIR of respondent no.2, could get justice and a fair trial before the court concerned. The observations made by learned ASJ for not entertaining the petitioner on the ground that the petitioner was only a witness is also

uncalled for. The petitioner was victim in this case since he was working in a government hospital and instead of making the FIR directly, he brought the incident to the knowledge of Medical Superintendent and the Medical Superintendent lodged a report on the basis of complaint of the petitioner. The petitioner was therefore an affected party and had a right to prosecute the complaint. Even otherwise, in every criminal case, State is the prosecutor and all victims and injured are shown as witnesses. Merely because a victim has been shown as a witness, the court cannot say that the court will not hear a victim as he has been cited as a witness. The complainant is always a witness in his own case. Thus a complainant cannot be debarred from being heard on the ground that he was a witness.

6. I, therefore, set aside the order passed by learned ASJ. The delay in filing the chargesheet is hereby condoned. The learned MM is directed to take cognizance of the offences and proceed in accordance with law.

November 19, 2010
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SHIV NARAYAN DHINGRA, J