

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(CRL) 50/2011**

Decided on 14.01.2011

IN THE MATTER OF :
SUNIL PANDEY

..... Petitioner

Through: Mr. S.B.Tripathi, Advocate

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Suchiti Chandra, Advocate for NCT
of Delhi

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* **HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Cr.PC, primarily seeking three reliefs.

2. The first relief sought by the petitioner is for issuance of directions to CBI to enquire into FIR Nos.337/2007 and 399/2007, both registered with PS Mayur Vihar, Delhi under Sections 376(2)(g)/324/380/452/506/34 IPC and under Section 324 IPC respectively.

The second relief is for quashing of the order dated 19.3.2010 passed by the learned ASJ in Sessions Case No.59/2008 arising out of FIR No.337/2007. Lastly, the petitioner has prayed for issuance of directions to respondent No.2 or respondent No.6 to take appropriate legal action against respondents No.2 to 5 and 7 & 8.

3. As far as the first relief is concerned, counsel for the State submits that the petitioner has deliberately withheld material information from the court to the effect that not only have charge sheets been filed in both the FIRs, i.e., FIR No.337/2007 and 399/2007, but prosecution evidence has already been recorded and ten witnesses cited by the petitioner/accused have appeared and deposed. She submits that now the matter is listed before the Sessions Court on 19.1.2011 for recording of further evidence on behalf of the petitioner. In response, it is stated on behalf of the petitioner that there is great delay in the proceedings.

4. In view of the aforesaid submission made on behalf of the State, a pointed query has been directed to the counsel for the petitioner to indicate the relevant paras of the petition in which averments have been made with regard to the delay in the proceedings pending before the trial court, in respect of the aforesaid FIRs. Counsel for the petitioner concedes that in none of the fourteen pages of the present petition, which read with the annexures, runs into 273 pages, is there any averment with regard to such a delay claimed in the trial arising out the aforesaid two FIRs. This puts paid to the first relief sought by the petitioner. When the matter is at an advance stage of recording the evidence in the proceedings arising out of the FIRs, the question of issuing any directions to any investigating agency

to enquire into the facts of the FIRs in question does not arise.

5. As far as the order dated 19.3.2010, impugned by the petitioner is concerned, a perusal thereof shows that the learned ASJ dismissed an application filed by the petitioner under Section 311 Cr.PC praying *inter alia* that two witnesses, namely, PW-3 and PW-4 be recalled for their cross-examination on the ground that Advocate who had cross-examined these two witnesses had actually not been authorized by the petitioner to cross-examine them on his behalf.

6. Counsel for the respondent submits that earlier to this, two similar applications were filed by the petitioner under Section 311 Cr.PC, which came to be dismissed vide orders dated 12.1.2010 and 22.2.2010 respectively. Neither of the two orders have been placed on record by the petitioner. However, the impugned order dated 19.3.2010 has itself recorded the fact that the orders dated 12.1.2010 and 22.2.2010 were challenged by the petitioner by preferring two separate revision petitions in this court. In view of the aforesaid position, the file of CrI.RP No.201/2010 was summoned from the Registry. A perusal of the said petition reveals that vide order dated 8.2.2010 passed in CrI.RP No.66/2010 preferred by the petitioner, a learned Single Judge of this Court dismissed the petition by holding that there was no material illegality, impropriety or perversity in the order dated 12.1.2010, by which the earlier application filed by the petitioner under Section 311 Cr.PC was dismissed. Vide order dated 30.4.2010 passed in CrI.RP No.201/2010, the petition filed by the petitioner under Section 482 Cr.PC praying *inter alia* for setting aside the orders dated 22.2.2010 and 19.3.2010 passed by the trial court dismissing the

applications filed by the petitioner under Section 311 Cr.PC was dismissed, holding *inter alia* that these orders did not deserve interference. It was further observed that PW-3, the complainant, Vijay Laxmi had been cross-examined at length on several dates by the counsel for the petitioner. Same was the position in respect of PW-4, ASI K.P.Singh.

7. Thereafter, the petitioner filed an application in CrI.RP No.201/2010 praying *inter alia* for recall of the order dated 30.4.2010. The said application was also dismissed vide order dated 13.7.2010. Aggrieved by the dismissal orders, the petitioner approached the Supreme Court by preferring a Special Leave Petition, registered as SLP No.7725/2010, which came to be dismissed vide order dated 19.11.2010.

8. Not satisfied with filing three applications under Section 311 Cr.PC before the Sessions Court, and two petitions in this Court under Section 482 Cr.PC, followed by a SLP in the Supreme Court, the petitioner has filed the present petition yet again seeking interference in the order dated 19.3.2010, which is not permissible. The aforesaid dismissal orders have attained finality after both the High Court and the Supreme Court refused to interfere with them in the revision petitions and SLP filed by the petitioner. Under the garb of invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 Cr.PC, the petitioner cannot seek to achieve directly, that which he cannot achieve indirectly.

9. The petitioner has deliberately withheld material information from this Court with regard to pendency of trial in respect of FIRs No.337/2007 and 399/2007, with no explanation coming forth for such an

omission. By no stretch of imagination can such an omission be treated as an error or *bona fide* as sought to be urged by the counsel for the petitioner. Furthermore, repetitive applications/petitions filed by the petitioner, one after the other for the same relief amounts to gross abuse of the process of the Court. Adding a couple of prayers in the present petition, while pushing down the prayer for interference in the order dated 19.3.2010, can only be termed mischievous and amounts to forum hunting on the part of the petitioner. This Court is also not inclined to grant the other reliefs sought by the petitioner for seeking action against respondents No.2 to 4 and 6 & 7, on account of purported dereliction of duty or otherwise as the petitioner has failed to make out any case.

10. Though no specific relief has been spelled out in the prayer clause, counsel for the petitioner contends that the fundamental rights of the petitioner have been violated by the police as they have not acted on his complaint dated 11.9.2007. However, on enquiry, he states that the petitioner has filed a Civil Suit No.920/2007 for permanent injunction, two complaints under Section 138 of the Negotiable Instruments Act, 1881, a complaint case under Section 156(3) Cr.PC based on his complaint dated 11.9.2007 and Civil Suit No.185/2010 for recovery of money against respondent No.8. It is abundantly clear that the petitioner has exercised his rights by invoking all the legal remedies that are available to him, against respondent No.8.

11. In view of the aforesaid facts and circumstances, the present petition is dismissed as devoid of merits and an abuse of the process of the Court, with costs of ₹10,000/-. The costs shall be deposited with the Delhi

High Court Legal Services Committee, within a period of two weeks. In case, the said costs are not deposited within the given time and proof of deposit is not placed on record, the Registry shall place this matter before the Court.

JANUARY 14, 2011
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(HIMA KOHLI)
JUDGE